

**NOMINATIONS OF R. GIL KERLIKOWSKE, L. PAIGE  
MARVEL, AND TAMARA WENDA ASHFORD**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

R. GIL KERLIKOWSKE, TO BE COMMISSIONER, CUSTOMS AND BORDER  
PROTECTION, DEPARTMENT OF HOMELAND SECURITY; L. PAIGE  
MARVEL, TO BE A JUDGE OF THE UNITED STATES TAX COURT; AND  
TAMARA WENDA ASHFORD, TO BE A JUDGE OF THE UNITED STATES  
TAX COURT

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JANUARY 15, 2014

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TO BE COMMISSIONER, CUSTOMS AND  
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**WEDNESDAY, JANUARY 15, 2014**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:12 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Schumer, Cantwell, Nelson, Menendez, Carper, Cardin, Casey, Hatch, Grassley, Crapo, Thune, and Burr.

Also present: Democratic Staff: Amber Cottle, Staff Director; Laurie Dempsey, Detailee; Jason Park, International Trade Counsel; Rory Murphy, International Trade Analyst; Mac Campbell, General Counsel; Tiffany Smith, Tax Counsel; and Andy Heiman, Tax Policy and Nominations Advisor. Republican Staff: Chris Campbell, Staff Director; Rebecca Eubank, International Trade Analyst; Richard Chovanec, Detailee; Everett Eissensat, Chief International Trade Counsel; Nicholas Wyatt, Tax and Nominations Professional Staff Member; and Alex Brant, Detailee.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR  
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

Senator Henry Clay, who was the chairman of this committee in 1841, once said this, and I quote him: "Government is a trust, and the officers of the government are trustees—and both the trust and the trustees are created for the benefits of the people."

The three individuals here today are dedicated public servants, trustees working hard for the benefit of the people. They are experts in their fields, and, if confirmed, they will bring an impressive array of diversity and experience to the job at hand.

Gil Kerlikowske has been nominated to serve as Commissioner of the United States Customs and Border Protection, often referred to as CBP. This agency enforces the country's trade and border security laws. If confirmed, Mr. Kerlikowske will be entrusted with

developing policy that has broad effects on America's economy and safety, a charge he is highly qualified to execute.

Mr. Kerlikowske has spent his career in public policy and law enforcement, most recently, as Director of the Office of National Drug Control Policy. Before that, he served as Chief of Police in Seattle. His decades of experience will help ensure our Nation's borders are secure, flexible, and utilizing the latest technologies.

This committee has jurisdiction over international trade, and CBP plays a crucial role in maintaining the flow of trade across our borders. CBP processes nearly \$2.5 trillion worth of goods every year, and it must ensure this process is thorough and efficient. CBP's director must consult regularly with Congress, Federal agencies, and the many businesses that rely on trade. This committee takes CBP's mandate to consult with Congress very seriously.

Senator Hatch and I introduced a Customs reauthorization bill last year. The bill is intended to help CBP prioritize its trade facilitation and enforcement functions, and it provides additional tools and resources to help the Commissioner do so. If Mr. Kerlikowske is confirmed, close communication with this committee will be important.

Also with us today are Tamara Ashford and Paige Marvel. Both are nominated to serve as judges on the United States Tax Court. Judge Marvel, in fact, has been nominated to serve for a second term.

The Tax Court gives Americans a venue and a voice to address legitimate tax concerns. It helps guarantee fair administration of our tax laws and hears 30,000 cases each year. It is a cornerstone of America's tax system.

Judges must be willing to put in long hours and endure a busy travel schedule. They hear cases in 74 cities across our country, and they spend weeks at a time away from their homes and families. The job is difficult, but Ms. Ashford and Judge Marvel are the right people to take it on.

Prior to joining the Court, Judge Marvel had a distinguished career in the private sector, and she has proven herself on the Tax Court and deserves support for her second term.

Ms. Ashford currently serves as the Deputy Assistant Attorney General for Appellate and Review in the Tax Division at the U.S. Department of Justice. She has a sterling track record of public service that she will carry with her to the Tax Court, including at the IRS and the Department of Justice. And like Judge Marvel, she has valuable experience in the private sector.

With their confirmations, the Tax Court will have a full complement of 19 judges for the first time since 1999. So, as we consider these nominations, let us remember Henry Clay's words that "Government is a trust, and the officers of the government are trustees working for the benefit of the people."

I thank all three nominees for joining us here today, and I hope the committee can act on their nominations quickly.

During today's hearing, we will also pause to vote on two nominations: Sarah Bloom Raskin, nominated to be the Deputy Secretary of the Treasury; as well as Rhonda Schmidlein, nominated to be a Commissioner at the International Trade Commission.

When we get a quorum, we are going to take a short break so we can vote on those nominees.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

**OPENING STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH**

Senator HATCH. Thank you, Mr. Chairman. Thank you for holding today's hearing.

Trade is essential to the growth of the U.S. economy, and U.S. Customs and Border Protection, CBP, is at the center of ensuring that legitimate trade flows smoothly and efficiently. This task goes all the way back to 1789, when the first Congress created the first agency of the Federal Government with the responsibility of collecting import duties. This first U.S. Customs agency would go on to come under the direct authority of the Secretary of the Treasury.

Following passage of the Homeland Security Act of 2002, CBP was created and is the unified border agency with the dual missions of facilitating trade and securing our borders against terrorism. These missions are performed by a workforce of almost 60,000 dedicated Federal employees. And with these important missions, it is vital that CBP has the proper leadership in place. That starts with the head of the agency.

Unfortunately, CBP has been without a Senate-confirmed commissioner since 2009. Last year, I called upon President Obama to nominate a commissioner and to appoint someone with a strong background in trade.

Mr. Kerlikowske, your background is in law enforcement and not in trade. However, from our conversations, I am confident that if you are confirmed, and I expect you to be, your lack of a trade background will not prevent you from making sure that the trade functions of CBP receive the same priority as the security functions.

Now, I think you recognize that trade is essential to the growth of our economy and that a strong economy is essential to our Nation's security. In addition to trade, intellectual property is also an important part of the U.S. economy. Therefore, I will continue to support CBP's efforts to ensure that strong enforcement of our Nation's intellectual property laws remains a high priority for the agency.

In March of last year, Senator Baucus and I introduced the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. If enacted, our bill would help to modernize CBP by making sure that it has the authority and tools necessary to carry out its trade facilitation mission.

We have received good feedback on the bill, and I hope the Finance Committee will be able to consider our legislation very soon.

Mr. Kerlikowske, if confirmed, I hope that you will work closely with this committee to ensure that CBP fulfills its proper role in facilitating and promoting trade.

Now, having said that, the United States Tax Court does not go quite as far back in our history as the first U.S. Customs agency, but it is a very, very important part of our tax system. It is the

only venue for taxpayers who want to challenge an assessed tax liability before payment.

Unlike many Federal Government entities, the Tax Court goes wherever the taxpayers are, with judges hearing cases in many cities throughout the country. Tax Court judges deal with the individual taxpayers face-to-face and actually speak to and hear from them in person. Very few nominees that we consider in this committee will have that kind of interaction. Keeping the Court staffed with qualified judges helps provide faster and better accountability to taxpayers. If both of the nominees we will hear from today are confirmed, the Tax Court will have a full complement of 19 judges.

Judge Marvel, having already completed one term on the Tax Court, has fortunately agreed to serve a second term. The Finance Committee has consistently encouraged the reappointment of Tax Court judges in order to preserve expertise and continuity in what is a very complicated area of policy. This is not to say that new judges are not important or welcome, of course, but experience is valuable.

Tamara Ashford already has extensive experience in the tax arena, having worked a great deal in private practice for the Internal Revenue Service and now for the Tax Division at the Justice Department. As she noted in a speech that she gave last year, she has seen tax practice from both sides of the table. I think that is important too.

Indeed, I think we have before us two very qualified Tax Court nominees, and I expect both of you to be confirmed quickly.

Mr. Chairman, I want to thank you once again for holding this hearing, and I look forward to hearing from all of our nominees here today.

The CHAIRMAN. Thank you, Senator, very much.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. Our first witness, Gil Kerlikowske, is nominated to be Commissioner of U.S. Customs and Border Protection.

Mr. Kerlikowske, here is an opportunity now to introduce your family. Then Senator Cantwell and Senator Murray will also introduce you.

First, I am going to let Mr. Kerlikowske introduce his family, and then Senator Murray and Senator Cantwell will speak.

Mr. KERLIKOWSKE. Thank you, Mr. Chairman.

My daughter Kim is here. She lives in Colorado with her husband and my grandchildren. She is a teacher. Unfortunately, my wife, Anna, could not be here, having been teaching in Florida this week rather than here in Washington, DC.

The CHAIRMAN. Thank you very much.

Would you please stand so we can recognize you? [Applause.]

Mr. Kerlikowske, you confirm one of my theories, which is, if you show me an achiever, I will show you there is a teacher in the family.

Senator Cantwell?

Senator CANTWELL. Well, I see my colleague, Senator Murray, is at the dais. Did you want to go ahead?

Senator MURRAY. I can wait for you. You go ahead.



**OPENING STATEMENT OF HON. MARIA CANTWELL,  
A U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman and Ranking Member Hatch. I am very pleased to introduce to the Finance Committee Director Kerlikowske, and I urge my colleagues to confirm him for this position as quickly as possible.

Many of you know or may know Mr. Kerlikowske, because he got 91 votes in the United States Senate for his current role as Director of the Office of National Drug Control Policy.

I have known him for more than a decade, and, throughout those years in law enforcement, he has a demonstrated and impressive record of exceptional management and leadership skills.

As Gil was the Chief of the Seattle Police Department for over 8 years, he was a leader in a community that worked collaboratively with local, State, and Federal agencies and organizations.

Many of you may know that Seattle is home to one of the largest ports and gateways for international trade. In fact, 70 percent of Seattle's container cargo comes or goes to the region of the country outside the Pacific Northwest. So Washington State exports were valued at \$75.6 billion in 2012. So needless to say, Customs, border, and security issues are a very important part of our economy, and anyone who has worked in that region knows how important that coordination is.

It has been good news that our trade deficit has been narrowing in recent months, but an important ability necessary to continue to be competitive in that area will be the international marketplace and Customs and Border Protection working to ease commercial trade processing systems so that U.S. companies can maintain an efficient supply chain and operate fast and secure trade flows.

In conducting this mission, CBP faces many challenges: promoting a fast and effective cargo clearance process, something my colleague, Senator Murray, has been very involved in; reducing the importation of counterfeit goods; and coordination of information and Federal agency guidelines.

Gil has a very solid track record in interagency coordination and implementing new initiatives, and I think continuing to step up to the challenges is going to mean new processes. In 2009, he became the Director of the Office of National Drug Control Policy, and he advised the President on this. And, again, Federal agencies needed the cooperation with local initiatives to make that work. And so all of this is going to be incredibly important.

And lastly, Mr. Chairman, he has worked to advance very cost-effective programs in improving enforcement efforts, and, again, I think that is always going to be the bottom line at Customs and Border Protection. We have to improve it. It has to be fast and efficient, but we always have to do it in a cost-effective way too, and these will be new initiatives.

So I very much look forward to his nomination moving through the Senate and for the work that he is going to do continually for our Nation.

The CHAIRMAN. Thank you, Senator.

Senator Murray, we are honored to have the senior Senator from Washington here.

Thank you very much, Senator.

**STATEMENT OF HON. PATTY MURRAY,  
A U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Thank you very much, Mr. Chairman. Thank you to Ranking Member Hatch and to all the members of the committee. I am very honored to be here with my colleague, Senator Cantwell, to introduce Gil Kerlikowske to the members of this committee.

I want to welcome Director Kerlikowske and congratulate him on the honor of being nominated as the next Commissioner of Customs and Border Protection at the Department of Homeland Security. I also want to thank Director Kerlikowske and all of his family for accepting this responsibility at this important time in our Nation's history.

Mr. Chairman, we know the next Commissioner of Customs and Border Protection will face a number of key challenges. He will be faced with the difficult task of balancing the need to secure our Nation's borders and ports of entry with the need to respect and preserve the civil liberties enjoyed by American citizens and the free flow of commerce that is so essential to our State and national economies.

Mr. Chairman, let me assure you that Gil Kerlikowske is the right man to address these challenges. He brings 37 years of law enforcement experience, including 9 years as Chief of Police for Seattle. With his recent experience as Director of the Office of National Drug Control Policy, he worked to bridge the gap between local and Federal law enforcement officials.

As he has shown time and again, Director Kerlikowske will bring a fresh, new, and hands-on perspective to Customs and Border Protection. As a former police chief, Director Kerlikowske understands the importance of partnerships between Federal, State, and local law enforcement, and he understands how to use evidence-based strategies to make communities safer by reducing crime, while improving the morale and performance of a large agency.

Mr. Chairman, I have seen his work firsthand as Seattle Police Chief. Under his leadership, not only did crime in Seattle reach an all-time low, but the Seattle Police Department, with county, State, and Federal law enforcement agencies, worked to bust a drug ring that stretched from Mexico to Canada, running right through Seattle and eastern Washington.

These multiagency Federal/local partnerships require cooperation and compromise, and they require a leader who can bring people with competing interests together; in other words, someone with Director Kerlikowske's proven experience.

When Director Kerlikowske left Seattle to take on his current role as Director of the Office of National Drug Control Policy, local police chiefs and sheriffs told me they were sorry to see him go but that the Nation was gaining a true innovator in Gil Kerlikowske. I could not agree more.

Director Kerlikowske has served the people of Washington State and the people of our Nation well, and I know that he will continue to do so in his new role. I am very proud to be here at the committee today to support his confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Before you speak, Mr. Kerlikowske, I would now like to introduce our other nominees.

I have already introduced Judge Marvel.

Judge Marvel, do you have family here you would like to introduce?

Judge MARVEL. I do, Mr. Chairman. My husband, Robert Dyer, Jr., is here. My two children, unfortunately, could not be here, but I will tell the committee a little bit about them in my opening remarks.

The CHAIRMAN. Would your husband please stand so we can recognize him? [Applause.]

And, Ms. Ashford, do you have family here?

Ms. ASHFORD. I do, indeed, Chairman Baucus.

I am very pleased to introduce my parents, Ronald and Wenda Ashford, from the great city of Boston, as well as my aunt from the great city of Baltimore, MD. [Applause.]

The CHAIRMAN. Senator Cardin, are you going to introduce Ms. Ashford?

Senator CARDIN. Yes, if I might, Mr. Chairman. Actually, I am going to introduce Judge Marvel, but I will be glad to also introduce Ms. Ashford, because you have a good family.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,  
A U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Let me thank all three of our nominees for their continuation of public service. It is a sacrifice, we know that, and it is a family sacrifice. So I thank Senator Baucus for always acknowledging the family, because we know that it is a real commitment, and we thank you for your service.

Mr. Chairman, I have known Paige Marvel for many, many years. I have known her since the 1970s when she was a young attorney at the law firm of Garbis and Schwait, known for her tax expertise. Later, she was a valuable member of the Venable law firm. Venable is a Baltimore-based law firm, then known as Venable, Baetjer, and Howard. It has grown a little bit since those days, but Judge Marvel, at that time, was their expert on tax law.

As a tax attorney, she had an unquestioned reputation for her expertise in tax law, but also for being a good person—a person easy to work with and a person of unquestioned integrity and unquestioned qualifications.

She has been extremely active in the Bar Association. In the American Bar Association, she chaired the Court Procedures Committee, and I give her a lot of credit for taking on that aspect of law that many of us who are lawyers run away from. She is also active in the Maryland Bar Association. She was the chair of the Tax Section of the Maryland Bar Association. She has numerous community activities. If you look at the list, you will see that she has volunteered in so many areas in our community.

Since April 1998, she has been a member of the Tax Court. Her reputation only continues to get stronger, and we really are very fortunate to have on the Tax Court a person of her expertise in tax law with her ability to work to make our system work.

I strongly recommend her confirmation, and I thank her again for her willingness to continue to serve.

The CHAIRMAN. The Chief Judge of the Tax Court is here today, Judge Thornton, and so are Judge Colvin and Judge Gale. Could you all three please stand? We want to show our support for the Tax Court. Thank you very much for your service. [Applause.]

It is interesting. Many Tax Court judges have a history with this committee, having worked for and served in various capacities on this committee, and we deeply appreciate that very much.

Mr. Kerlikowske, we would love to hear from you. And your statement is automatically going to be included in the record.

**STATEMENT OF R. GIL KERLIKOWSKE, NOMINATED TO BE COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Mr. KERLIKOWSKE. Thank you, Mr. Chairman, Ranking Member Hatch, and distinguished members of the committee. It is a privilege to appear before you.

Mr. Chairman, I have to take a moment, as you look to a new venture, to recognize your service to the people of Montana and to our Nation.

And thank you for allowing me to introduce my daughter.

Let me say, when I enlisted in the Army in 1970, I took an oath to protect the country, and I have upheld that duty for over 40 years as a police officer, police chief in Buffalo and Seattle, and I was elected by my peers to be president of the Major City Chiefs Association.

As Director of the Office of National Drug Control Policy, I have worked very hard to reduce the problem of drug abuse both domestically and internationally. And during my almost 5 years of leading ONDCP, I have made transparency, responsiveness, and communication with Congress hallmarks of my tenure. And, if confirmed, I will continue that leadership at CBP.

I am honored that the President nominated me to lead the largest law enforcement agency in the United States and one whose mission is critical to the physical and economic security of our country. I have had the pleasure over these years to work hand-in-glove with our partner agencies, CBP included, and colleagues to author the Northern Border Strategy, which you are very familiar with, and the Southwest Border Counternarcotics Strategy.

I represented the United States to over a dozen countries, meeting with heads of state and customs officials to engage in programs to decrease drug trafficking and build strong border communities and international partnerships. In addition, it is incumbent that CBP also interdict weapons and funds that are coming from the United States destined for transnational organized crime.

The dual missions that Senator Hatch mentioned, which are to facilitate legitimate trade and travel and, also, secure the border, are missions that I believe are mutually reinforcing. Border security and preventing terrorists, weapons of mass destruction, and threats to agriculture from impacting our country, are the more well-known side of CBP. However, CBP's vital Customs responsibilities include enforcing over 500 laws for 47 Federal agencies. We protect international property rights, processing more than \$2.3 trillion in international trade and collecting more than \$40 billion annually in Customs duties.

And since my nomination, I have been honored to meet with many of you and your staffs and members of the Commercial Operations Advisory Committee, the trade associations, companies, all of which have a stake in CBP's mission and future direction, and I assure you that this is the beginning of a collaboration that will, if I am confirmed, continue and deepen.

My experience as a major city police chief has continually reinforced the understanding that protecting people and their livelihoods are interconnected. Commerce, the backbone of American jobs and trade, depends on a predictable and safe environment for business, and law enforcement is critical in creating that. And where a large police department must foster a safe and welcoming environment for business and visitors and maintain the public's trust and confidence, well, CBP's law enforcement role is the same.

In listening to leaders of the trade community, I have heard consistently that CBP has made real progress to modernize, simplify, and make more uniform its trade and business process. If confirmed, I intend to build on that foundation to foster economic prosperity, economic security, and the border security objectives, continuing the outreach to stakeholders and Congress.

If confirmed, I want to focus on four particular areas. First, CBP needs to continue to prioritize the completion of the Automated Commercial Environment (ACE). That is the electronic automated system for the efficient transmission of data to all U.S. Government agencies, and that will ensure efficient and timely entry and release of cargo.

Second, CBP needs to modernize its export process to streamline exports and foster growth for U.S. companies, and this needs to be done in close collaboration with all of CBP's partners, including industry.

Third, CBP needs to focus its enforcement resources to protect U.S. companies from unfair competition; ensure that American technologies, intellectual properties, and goods are protected from threats; and protect domestic consumers from unsafe and counterfeit products.

And fourth, CBP needs to build and retain a world-class, knowledge-based workforce, and the morale challenges within CBP really require sustained leadership attention.

If I am confirmed, this too will be a major priority.

Thank you for the opportunity to appear before you, and I look forward to answering questions.

The CHAIRMAN. Thank you, Mr. Kerlikowske.

[The prepared statement of Mr. Kerlikowske appears in the appendix.]

The CHAIRMAN. Actually, I have some obligatory questions I am going to ask all the nominees, and we will get to the others later.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. KERLIKOWSKE. No.

The CHAIRMAN. Judge Marvel?

Judge MARVEL. No.

The CHAIRMAN. Ms. Ashford?

Ms. ASHFORD. No.

The CHAIRMAN. Thank you.

Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. KERLIKOWSKE. No, sir.

Judge MARVEL. No.

Ms. ASHFORD. No.

The CHAIRMAN. Thank you.

Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress, if you are confirmed?

Mr. KERLIKOWSKE. I do.

Judge MARVEL. Yes, sir.

Ms. ASHFORD. Yes.

The CHAIRMAN. Thank you.

Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. KERLIKOWSKE. Yes.

Judge MARVEL. Yes.

Ms. ASHFORD. Yes.

The CHAIRMAN. Thank you.

Judge Marvel, why don't you present your testimony? Then we will have Ms. Ashford give her testimony.

**STATEMENT OF HON. L. PAIGE MARVEL, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC**

Judge MARVEL. Thank you. Chairman Baucus, Ranking Member Hatch, and distinguished members of the Committee on Finance, thank you for the privilege of appearing before you today.

I last appeared before this committee almost 16 years ago, after I was nominated for my first term as a Tax Court judge. I am grateful to President Obama for nominating me for a second term on the Court, and I am grateful to you and to the committee staff for the help given to me throughout this process.

Senator Hatch, I am particularly grateful for your statement about my pending nomination during the confirmation hearing of my colleague, Chief Judge Michael Thornton.

I would be remiss if I did not also acknowledge and thank Senator Ben Cardin and his staff for the help they gave me both before and after the President announced my nomination. I am a lifelong resident of the State of Maryland, and I have followed Senator Cardin's political career from the time he was rising in the ranks of the Maryland State Legislature. He has been my Delegate, Representative, and Senator for decades. I have long admired his commitment to constituent service, and I have benefitted from it several times. Senator Cardin, thank you for your continuing excellent service to the State of Maryland and to this country.

I would like to take this opportunity to also thank my family for the support they have given me during my career. My husband of almost 40 years, whom I introduced to the committee, Robert Dyer, has been my greatest supporter and friend since we first met in 1971 at the University of Maryland School of Law.

We have two children. Our son, Alex Dyer, holds a B.S. degree in architecture from Washington University in St. Louis and intends to pursue a career as an architect. Our daughter, Kelly Dyer, holds a B.S. degree in neuroscience and behavioral biology from Emory University and is currently working in Atlanta as a research assistant on a public health project while she studies for the MCAT examination.

There are two members of my family who are not here today whom I really need to acknowledge. My mother, Louise Harrison, is 92 years old and, due to health problems, can no longer travel. If she were here, she would tell you that she served this country honorably during World War II as a U.S. Army nurse anesthetist on a hospital ship in the Atlantic and in the Mediterranean. She would also tell you, whether you asked or not, that if you want to honor her service, you should confirm her daughter. [Laughter.] I had to say that, sorry.

My sister, Vicki Marvel, is a school counselor in a middle school in Norman, OK. She looks after my mother, and she is also recuperating from a knee replacement surgery she had recently.

I wish they could be here. They are not. I want to thank both of them for making me the person I am today.

My professional family is also here, and I want to acknowledge them, if you would permit me to do so. Angela Frith is my chambers administrator, who is seated here behind me. My two law clerks are Chaim Gordon and Doug Longhofer. Together, they keep my chambers functioning at a very high level, and I am grateful for their hard work on my behalf, and I really want to take the opportunity to state publicly how much they do for me on a daily basis.

I also want to thank my colleagues, Chief Judge Michael Thornton, Judge John Colvin, and Judge Joseph Gale, for supporting me and Tamara Ashford by attending this hearing today.

Before I joined the Tax Court in 1998, I practiced tax and business law for 24 years and clerked for several years before that. I tried cases in the Tax Court and in other Federal and State courts throughout this country. That experience led me to appreciate both the benefits and burdens of the litigation process and the effect that it has on the people it touches.

As a Tax Court judge for almost 16 years, I have taken my experience and applied it to the courtroom over which I preside. I make every reasonable effort to treat litigants fairly, to alleviate the fear that many litigants and witnesses have when they enter a courtroom, to assist litigants in understanding what they must prove, and to help them build the record I need to decide a case fairly.

I am mindful that the Tax Court is the Federal court that handles the vast majority of Federal tax litigation in this country and that it has a very large population of pro se or self-represented taxpayers.

Congress designed the Tax Court to be a litigation forum for all taxpayers, represented or not, and I will continue, if confirmed, to honor Congress's intention by approaching cases with an open mind and a commitment to justice.

Thank you again for considering my nomination. I would be happy to answer any questions that you might have.

The CHAIRMAN. Thank you very much, Judge.  
[The prepared statement of Judge Marvel appears in the appendix.]

The CHAIRMAN. Ms. Ashford, you are next.

**STATEMENT OF TAMARA WENDA ASHFORD, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC**

Ms. ASHFORD. Good morning, Chairman Baucus, Ranking Member Hatch, and distinguished members of the Finance Committee. Thank you for the privilege of appearing before you today.

I am grateful to President Obama for nominating me, and I am grateful to you and the committee's outstanding staff for processing my nomination so promptly.

Thank you again for allowing me to introduce my parents, Ronald and Wenda Ashford. My father is actually a retired high school teacher with the Quincy, MA public schools, having taught at the same school for over 35 years.

The CHAIRMAN. More confirmation of my theory: show me an achiever, and there is a teacher in the family.

Ms. ASHFORD. Correct. Similarly, my mother retired after a nearly 40-year career at the Massachusetts General Hospital.

They have both instilled in me the passion for learning and a love for the law, as well as the values of working hard and being a good public servant, and I am thrilled that they could be here with me today. Their support has been invaluable, and I am grateful beyond what words can convey.

I was also very pleased to introduce my aunt, joining us from Baltimore. My Aunt Bonnie is an inspiration to me because of the imprint she has made and the barriers she has broken in tennis—not only in North Carolina, where she and my mother, together with their brother, were raised, but in the larger tennis world. A professional tennis player, notably, Bonnie was the first black member of the Virginia Slims Tennis Circuit, which circuit eventually became the basis for the later-named WTA Tour. And she was among the first people of color to play in the South African Open Tennis Championships in Johannesburg, South Africa in 1972. I am grateful for her continuous support.

Most of my nearly 20-year career as a lawyer has been spent directly involved in the area of tax controversies and litigation, and I have experience in handling these types of matters from all sides—the Department of Justice, private practice, and the Internal Revenue Service.

In private practice, my focus was on Federal tax controversy and litigation matters, representing both corporate and individual taxpayers in the United States Tax Court, as well as other Federal trial and appellate courts.

Early in my career, as a civil tax appellate attorney with the Department of Justice's Tax Division, I briefed and presented oral argument in cases before the U.S. Courts of Appeal that were appealed from the Tax Court, as well as other Federal courts.

For the past few years, as the Deputy Assistant Attorney General for Appellate and Review, I led the team responsible for determining the government's unified strategy with respect to civil tax



appeals originating from the Tax Court and other Federal courts. I also worked to resolve civil tax cases through settlement or through concession.

As an aside, I actually would like to take this opportunity to thank my boss, Assistant Attorney General Kathy Keneally, who is here today—thank you—for her leadership, her support, and her friendship. I owe a great deal of thanks to her for the fact that I sit here today as a nominee to the Tax Court.

Through my experiences, which also include leadership positions held outside my professional work, I have come to understand what makes a good judge and have amassed the temperament and skills to be an independent arbiter as a Tax Court judge. If confirmed, I hope to continue to be guided by the principles and values instilled in me by my family and my past experiences, to work hard, and to serve our Nation's tax system by resolving tax controversies fairly, impartially, and expeditiously.

Thank you again for the opportunity to testify, Mr. Chairman. I am happy to answer any questions the committee may have.

The CHAIRMAN. Thank you, Ms. Ashford.

[The prepared statement of Ms. Ashford appears in the appendix.]

The CHAIRMAN. What, in your experience, in your prior roles—private sector, public, and so forth—have you learned that is going to be most important, do you think, for your new job as a judge on the Tax Court? What have you learned that is probably going to be most important for you to focus on?

Ms. ASHFORD. Thank you for your question, a very important question, Chairman Baucus.

I think, for me, my wealth of professional legal experience has prepared me for the role as Tax Court judge. In particular, when I was in private practice, I had the ability to represent taxpayers before the Tax Court—corporate taxpayers as well as individual taxpayers. And in particular, with respect to individual taxpayers, I have had the personal experience that it can be daunting and confusing for, in particular, less-sophisticated taxpayers to resolve their disputes with the government, with the Internal Revenue Service.

So I think my experience in representing both individual and corporate taxpayers will serve me well on the Tax Court, to serve as an independent arbiter to the Court.

The CHAIRMAN. I just think it is an advantage you have: that is, outside experience like that. That is going to make a big difference, I think. I appreciate that experience.

Ms. ASHFORD. Thank you, Senator.

The CHAIRMAN. Judge Marvel, briefly, you have been working with the Tax Court for a while now. We are trying to reform the tax code. Very briefly, just give us one or two salient observations you have with respect to the U.S. tax code that you think the Congress should address.

Judge MARVEL. I am not sure that I am really prepared to say what Congress should address, Senator, but I will say this, that having seen the tax system affecting real people and having those cases then come to the Court for us to resolve, it is readily apparent to me that the more that people can understand what the tax

law requires of them and what they need to do to comply with it, the better off the entire system will be, and the better off the Court will be.

The vast majority of the litigants whom I have seen during my years on the Court have been people or companies or States that operate with regard to the tax law in good faith. They may make a mistake. The government may, in fact, be wrong. But the bottom line is, they come to the Court maybe a little confused, maybe they made a mistake. But they are certainly not deliberately trying to cheat the government. You have a few notable exceptions to that.

But I do think that the more people can understand what they are obligated to do—

The CHAIRMAN. You are suggesting perhaps more simplification.

Judge MARVEL. That is exactly what I am suggesting.

The CHAIRMAN. Thank you.

Mr. Kerlikowske, what is the one major effort that you think must be undertaken to encourage greater trade facilitation, because trade is so important and becoming so much more important over the years to our job growth, et cetera?

Is there something that kind of comes to mind, sort of number one, that we should focus on, you in your new job and Congress, to help facilitate trade, from your job's perspective?

Mr. KERLIKOWSKE. Senator, I met with a number of trade associations and companies, from Boeing to COSCO, et cetera. They want predictability and consistency, and they would also like to see the interagency functions of the U.S. Government operate with that same level of consistency.

That is why I am encouraged by the support for the automated system that would provide everyone in the U.S. Government exactly the information that they need to make those decisions, to get the cargo in, to make sure that it arrives safely, and to make sure that it is disbursed properly. And I think that I will devote a significant amount of time to making sure that that very expensive computer system is up and running and performs the way it should for commerce.

The CHAIRMAN. And I suppose you will take some of your experience as the Seattle Police Chief, where you worked with different agencies, Federal and State, et cetera, to get people working together, moving in the same direction.

Mr. KERLIKOWSKE. Very much so. The fiscal environment is difficult and will continue to be difficult. The more that the different agencies can cooperate, and, particularly I think, the more the Federal Government can cooperate and work with State and local officials, the better.

The CHAIRMAN. Well, I encourage you to be a leader. I know you are anyway. But take the reins, take over. Thank you. Thank you very much.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

I want to compliment both of the nominees to the Tax Court for being willing to serve and for the expertise that you bring to it.

In particular, I am really pleased to see your—is it your aunt here who played tennis?

Ms. ASHFORD. Yes.

Senator HATCH. I remember going to South Africa at the height of Apartheid, and I really appreciate you being here today too, and the rest of the family—all of you.

So you both are very competent, and we are going to support you as strongly as we possibly can, and we look forward to having you serve. These are important jobs, and I appreciate the humility that both of you display with really wanting to help people who really do not know where to go and what to do. So I want to congratulate both of you for your service and for your expertise, your background, and what you have been able to do with your lives.

Mr. Kerlikowske, you do not get off quite as easy. But you are going to get off easy, because I think very highly of you.

As I said in my opening statement, protecting the homeland is essential to our security, but trade is also very important to our economic security. So, if confirmed, and I believe you will be, as the next Commissioner of CBP, how will you ensure that trade functions receive high priority at CBP?

Mr. KERLIKOWSKE. There are two things that I would undertake. One is that I would continue with the meetings that I have had, but then in an official capacity, if confirmed, to make sure that the trade and also the travel community has an open door and clear lines of authority.

I would also appoint two direct reports to me within CBP, one to serve as a liaison to the trade community and one to serve as a liaison to the travel community, so that those organizations would have a single point of contact that would be direct to me. I would also, of course, be open to all of those conversations with them.

Senator HATCH. That is great.

Intellectual property matters are an important part of our ability to both export and import innovative goods and services around the world. When we held a hearing to discuss the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, we heard from the general counsel at the National Electrical Manufacturers Association, Mr. Clark Silcox, about the importance of IP protection. Mr. Silcox stressed the importance of ensuring that counterfeit and unsafe products that could potentially harm U.S. consumers do not cross over our borders.

So, while we need strong intellectual property rights enforcement abroad, we also need strong enforcement at our borders. Please let us know what you would do, if confirmed as the next Commissioner of CBP, to ensure that our intellectual property laws are properly enforced at our Nation's borders.

Mr. KERLIKOWSKE. Senator, that issue has been made very clear to me. I can tell you that I have been impressed with the interagency work group that has been put together to protect intellectual property, and I also recognize that the power of innovation and new products is critical here in the United States.

I would continue to build upon that interagency cooperation. Also, the Centers of Excellence that have been developed—10 of them now for CBP—provide subject matter expertise in this area so that there is one set of learning programs, one set of information that can be communicated, whether it is the port in Seattle or the port in Baltimore, on what to do be alert for.

Also, I think we have to move faster. CBP will have to move faster to be able to get this information out. Waiting for days at a time is not going to work for me.

Senator HATCH. Thank you. Let me just ask one more question.

Several months ago, we held a hearing here to consider legislation reauthorizing Customs. At the hearing, David Cooper, the Global Customs Compliance Manager at Proctor and Gamble, discussed the damaging effects of counterfeit products and particularly the danger posed to consumers by counterfeit drugs.

Now, Mr. Cooper described the ways P&G has collaborated with CBP to increase identification of counterfeit products at our borders. As the current drug czar, you know the importance of preventing unsafe drugs from entering the United States. So let us know what you would do, if confirmed, to make sure that unsafe drugs do not enter into the United States.

Mr. KERLIKOWSKE. Senator, I think there needs to be better communication and better collaboration with the Food and Drug Administration.

I have been really privileged to be able to work with Dr. Hamburg now as the Administrator of FDA for 4½ years on the issue of opioids and prescription drug abuse issues and, also, precursor chemical issues that come into the United States.

FDA, of course, has hold-and-release authority at these ports, but I think that, in my meetings with her and others, it will be critical that this level of knowledge and cooperation be expanded upon, particularly because at all of the ports at that 24/7 timeframe, there are CBP people present, but there are not always FDA people because of the staffing.

So increasing the communication, education, et cetera, with CBP and FDA will be critical to that end.

Senator HATCH. Mr. Chairman, I want to compliment Mr. Kerlikowske and our two nominees for the Court. You are really great people and you deserve our support, and we will do everything in our power to see that you get it as quickly as we can. I just want you to know that, all three of you.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Congratulations, all of you.

I hope if I do not ask the judges any questions, you do not take it personally. I have a couple questions for Mr. K, if he would respond.

You have some very good—I believe seven points that you want to focus on, if you are confirmed. They were in your opening statement. And I think they are fine, and I do not have any problems with them.

None of them, though, dealt directly with border security, but rather, how to increase efficiencies and other things.

Am I to assume from your priority list, which does not include much about overall border security, that you believe that we are already sufficient in that area?

Mr. KERLIKOWSKE. No, Senator. I was very cognizant of staying within my 5 minutes. But in my written testimony and in my discussion with various members of the staff, border security was particularly important.

Having authored the Southwest Border Counternarcotics Strategy, having made probably now close to a dozen trips to the southwest border to work with State and local officials and to see the operations going on there, I clearly understand and recognize the importance of border security.

I think that there have been significant improvements in border security. I think more needs to be done, and through technology, through the use of the resources that Congress has funded, I would make sure that those are used in a consistent way to increase border security.

Senator GRASSLEY. The second question deals with undocumented immigrants. I am concerned about the increased number of applicants who are filing for asylum or claiming credible fear at our ports of entry, especially at the southern border. We are now seeing 36,000 credible fear applications in a single year, and that was only 5,000 in the year 2008.

I bring this up because Customs and Border Protection agents would be the first point of contact for these individuals. The *Washington Times* and the House Judiciary Committee have reported that drug cartels are using our asylum system to bypass immigration checkpoints. An internal Customs and Border Protection memo also details that.

In one instance, a woman made a claim of asylum and, 3 months later, was apprehended by the border patrol checkpoint with more than \$1 million worth of cocaine. If someone claims credible fear, they wait for their interview with an asylum officer. There is some discussion that more scrutiny needs to be given on this front, on the front end, so that they cannot exploit that loophole.

A couple of questions. If confirmed, would you make it a priority to talk to agents and determine if our generous asylum process is being exploited?

Mr. KERLIKOWSKE. Senator, it is a very important issue, and I recognize the long history in the United States of being able to provide asylum to people who meet the standards. I know that the process can be rather lengthy. I have spent a career as a law enforcement officer, as a police chief, particularly, being out in the field, kind of being a hands-on individual, as Senator Cantwell mentioned. I would continue to do that, if I am confirmed as the Commissioner of CBP.

I would look at this issue very carefully and understand its complexity, but I would not want this exploited in a way that would harm the United States.

Senator GRASSLEY. Well, I guess as a final point, I would ask if you—well, first of all, I want to make a point that I surely want your agents to find ways to address what I think is an abuse without compromising our tradition of asylum.

And, if confirmed, then would you report back to me about actions that you will take to ensure that CBP agents are doing all they can to stop the abuse, including cooperation with the U.S. Citizenship and Immigration Service adjudicators?

Mr. KERLIKOWSKE. I will do that, Senator.

Senator GRASSLEY. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman, and welcome to all the nominees, particularly to the one I know best, to my good friend Gil Kerlikowske, who did a great job in Buffalo before he moved to Seattle and many other places. He leaves a fine reputation in every place he goes and then leaves. [Laughter.] We wanted him to stay in Buffalo. He is a great chief.

So I want to talk to you about our ports of entry, specifically at JFK in New York City and the Peace Bridge at the other end of our State, in Buffalo.

JFK Airport in New York has the longest average Customs wait line in the country. Nearly 1,000 passengers per day experience greater than a 45-minute wait for inspection, some days greater than 60. In summer, average delays during peak hours exceeded 2 hours. That is not a good introduction to America or New York, obviously.

Record-long wait times at JFK are limiting the amount of time that travelers spend in New York and are deterring further travel to New York City and to the rest of the country, New York being our biggest gateway. So Congress, as you know, is likely to pass an omnibus appropriations bill that will provide CBP with \$165 million to hire 2,000 new CBP agents. I worked with Subcommittee Chairman Landrieu and Chairman Mikulski to try to make this happen.

Can I have your commitment that, if you are confirmed, you will assign an adequate portion of the 2,000 new agents in our appropriations bill to address JFK's shortage?

Mr. KERLIKOWSKE. Senator, your point is absolutely excellent. People who are welcomed into this country after a lengthy travel do not need to wait many hours in line.

I have been impressed with the work that CBP has done, not only in being courteous and respectful to people. There are improvements in technology. I am particularly heartened by the potential for the addition of 2,000 agents at our ports of entry, because I think that is absolutely critical. And I would certainly ensure that the ports with the longest wait times and the greatest traffic, those agents would be assigned to those locations.

Senator SCHUMER. So that means JFK, because we have the longest wait time. Is that right?

Mr. KERLIKOWSKE. I think you are right, Senator.

Senator SCHUMER. Thank you. Say no more. Next question.

Buffalo, Peace Bridge. Last year, we also saw a dramatic increase in wait times for both passenger and commercial vehicles on the Peace Bridge in Buffalo, as you know.

We are trying to get the western New York economy going again. One of the positive things is that Toronto is booming, and Buffalo is the major port of entry into the U.S. for the whole Toronto metropolitan area. That is very important to us, and the Peace Bridge is the major—there are others—but the major crossing point.

The average commercial vehicle had to wait 29.4 minutes in fiscal year 2013. That is up about 25 percent. The average passenger vehicle had to wait 26.4 minutes. That is up 33 percent, and that is just average. There are hours and hours and hours of waiting,

and trucks then decide not to come through the port of Buffalo and go somewhere else, because the waits are so much longer there.

The situation is clearly unacceptable, as we need more agents, ushering travelers, sports fans, shoppers, commercial vehicles into western New York. A lot of Canadians come to shop in Buffalo because of the exchange rate and stuff like that, and this is obviously a deterrent there too.

Secretary Johnson has already committed to me that he will provide more agents to the Peace Bridge, assuming we pass the pending appropriations bill. But since these agents are employees of CBP, will you also confirm here today that you will do everything you can to add more resources to speed up traffic along the Peace Bridge, and will you do everything you can to make the preclearance pilot, which has already successfully worked in my colleague Maria Cantwell's State and is just starting now in Buffalo—there are two pilots in the country, one in Washington State, one in Buffalo—a permanent reality?

Mr. KERLIKOWSKE. Senator, if I am confirmed—and my new boss has already assured you of that—I would work very hard to live up to that promise.

Senator SCHUMER. Great.

Mr. Chairman, I yield back the rest of my time.

The CHAIRMAN. Thank you, Senator, very much.

Senator Cantwell, you are next.

Senator CANTWELL. Thank you, Mr. Chairman.

And again, Mr. Kerlikowske, thank you for your willingness to serve. My colleagues have already started on kind of a dual track of asking questions.

Obviously, speed is essential and so is security, and it is one of the reasons why I am excited about your nomination to this position, because somebody who comes from the Pacific Northwest gets that so importantly. Nothing highlighted the importance of trade more than the falling down of the Skagit River Bridge curtailing I-5 traffic and costing us hundreds of millions of dollars in lost opportunity practically daily.

So we have to get that right. Speed matters. But I am glad that you mentioned the word “transparency” in your statement and that that is one of your goals. From a Pacific Northwest point of view, there are two words that are incredibly important to me and to my constituents. One is the issue of technology and the use of technology, and the other is privacy.

I am hoping that in this position you will be able to further both of those issues and find the right balance. So I wanted to ask you, will you do everything to protect the constitutional rights of U.S. citizens on their rights to privacy in this position?

Mr. KERLIKOWSKE. Certainly, Senator, I would very much do that, if I am confirmed in this position. And I think my history in Seattle, in particular, is helpful, as police chief.

I put in the cameras, the video cameras inside the police cars so that every police car would have an audio and a visual recording of every traffic stop. We instituted a number of checks and balances. Having been police chief there during 9/11, you know that the city of Seattle operates under a unique intelligence oversight

ombudsman agreement similar to what existed in New York City and what is called the Handschu agreement.

I was told that perhaps it would be time, after 9/11, that that oversight mechanism, the ombudsman, would not be as necessary given the threat of terrorism in the country. I looked at that very carefully and believed that we could very much operate and maintain a safe city at the same time that we had transparency and the ombudsman to oversee our intelligence activities, and I would continue that at CBP.

Senator CANTWELL. Well, I think these issues are important. Obviously, CBP—prior to your nomination—caught a lot of people off guard out on the Olympic Peninsula showing up in unmarked cars. People were not thinking that they were 25 miles from the border. They were thinking they were out on a Sunday afternoon drive and the next thing you know, they were being pulled over by somebody, and they did not even recognize the markings. So transparency is very important to this process.

But you might have seen the *Washington Post* article today on unmanned aerial vehicles. The Commerce Committee is having a hearing this afternoon on unmanned aerial vehicles. Now, Customs and Border Protection can make great use of this technology, whether we are talking about the drug interdiction off the coast of Washington and helping the Coast Guard or our very porous borders that cannot have people everywhere.

But, obviously, one of the big privacy concerns is that somehow information will be collected and stored and then accessed by other individuals that may invade the personal privacy rights of U.S. citizens. So I hope that you will work, as the head of this organization, to pay attention to these privacy issues, to see that technology moves forward, but that we come up with a firm and solid ground for the privacy rights of U.S. citizens under the Fourth and Fourteenth Amendments to be protected.

Mr. KERLIKOWSKE. I very much understand that, Senator, and I would adhere to that.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Thune?

Senator THUNE. Mr. Chairman, I just walked in. I would be happy to yield to my neighbor here from North Carolina who has been waiting patiently.

The CHAIRMAN. That is right. Actually, next on the list is Senator Carper.

Senator CARPER. I am happy to yield to Senator Burr.

Senator BURR. Mr. Chairman and my colleagues, thank you very much.

Judge Marvel, thank you for your service.

Ms. Ashford, your connections to North Carolina just made you a certainty of getting through.

Ms. ASHFORD. Thank you.

Senator BURR. I want you to know that.

Mr. Kerlikowske, thank you for what you do, and I just have one question for you.

In November 2012 and again in November 2013, as the Director of Drug Policy, you sent letters to the Health Minister of Canada



suggesting that the two governments work together in determining whether or not to allow non-abusive deterrent formulations of tamper-resistant medicines to be approved.

Let me just speed forward. I understand that you met recently with your Canadian counterparts to pursue the alignment on abuse deterrent formulations. And I will have some questions for the record that are a little more specific.

Let me ask you today, can you give us an update on how those conversations took place and, more specifically, how Border Patrol can be utilized in a way to assure us that any harmonization is accomplished in a successful way?

Mr. KERLIKOWSKE. Thank you, Senator. This has been an important issue because of the number of deaths, over 16,000, due to prescription drugs. Drug deaths now in the United States surpass deaths due to accidents, both automobile fatalities and also gunshot wounds. So we have been focused on these prescription drugs which come right out of, oftentimes, our medicine cabinet.

The pharmaceutical industry has worked hard to develop abuse-resistant formulas that cannot be crushed or injected, and that has been helpful. Unfortunately, that has not occurred in Canada, and we know from, in fact, Milwaukee that some of these drugs have been detected.

So I met with the Health Minister now 2 years ago to talk about that. And, as you know, they have a very different system of government in which their provinces hold a great amount of authority, and it is not the same level of authority that our FDA would have.

Since that time, there is a new Health Minister, and I have not had the opportunity to meet with that person, but I am continuing to work to see that abuse-resistant formulas be recognized as important in Canada. And just as importantly to the United States, if those are the only ones that are available, we would have far less to be concerned about from them coming into the United States.

Senator BURR. Well, I thank you for recognizing the threat and encourage you to continue to work with our partners to the north to try to harmonize what they do to match the threat that we are presented with.

In your new role, I hope you will use your position to force that harmonization in any way you can.

Thank you for this. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Menendez, you are next.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Chairman.

Senator MENENDEZ. We look forward to your appearance before the Foreign Relations Committee, Mr. Chairman, which I am sure will be very successful. [Laughter.]

Mr. Chairman, I appreciate all of the witnesses here. My focus is on Mr. Kerlikowske, whom I have had the pleasure of having some discussions with.

I know that, while the committee's focus is primarily from the Customs point of view, since this is the one hearing that will be held, I wanted to make sure that I broach some other issues on the other side of your portfolio, and that is on the CBP use-of-force policy.

I look at that, and since January of 2010, at least 19 people have died as a result of alleged excessive force by CBP officials. Yesterday, the DHS OIG released a report on the CBP use-of-force policies, outlining some first steps that the agency is taking, such as tracking the use-of-force incidents, and, frankly, I think more can be done.

When a young person throws a rock across the border, toward the border or a border agent, some agents respond with a gun, and others do not seem to respond at all. There seems to be some need for consistency in the response to these incidents and how we treat them.

Several members of Congress and I asked the DHS Office of Inspector General to complete a review of CBP's use-of-force policy and practice, and they recently issued their recommendations. In addition, CBP conducted its own review and sought the expertise of an outside review by the Police Executive Research Forum. As a result of these reviews, they announced that there will be a series of reforms based on more than 90 recommendations from these reviews.

So, obviously, there is an issue here, because we have had both the agency and those outside of the agency look at this question. So my question to you is, will you commit to implementing the recommendations issued by the Police Executive Research Forum and provide Congress and the public with maximum transparency regarding CBP's use-of-force policy, including release of that report?

Mr. KERLIKOWSKE. Senator, transparency in a use-of-force policy in any law enforcement agency is critical. If you do not have the trust and the cooperation of the people you serve and they do not understand or they are not knowledgeable of your policies, it makes that trust and cooperation very difficult.

I have not been in a law enforcement agency in which the specifics of the use-of-force policy were not available to the general public, and I would work very hard to see that that is done within CBP. Having spent 4 decades in law enforcement, I clearly recognize the difficulties around use-of-force policy, including the training, including the equipment, including the changes that may have to be implemented in culture.

I have to tell you, I have been very heartened by the briefings that I have had by Chief Fisher, and also the statements that the acting Commissioner, Tom Winkowski, has made to the public about the changes and reviews that are underway.

I looked at the reports that have been provided to me. I am not familiar with every specific recommendation, but I think I have a long and, I really believe, a well-deserved reputation in law enforcement for making sure that people are held accountable.

Senator MENENDEZ. I appreciate that, and before my time runs out, what I want to know is—I would like to get a commitment from you that you will report back to us about what those recommendations were and what recommendations you are going to follow and which ones are you not.

I want our people to be protected at all times. By the same token, I do not want an unnecessary death, and there is a lack of uniformity of policy that exists. So, whether it is up to the individual to shoot or not shoot—a badge gives you your legal author-

ity, a gun gives you your ultimate authority, and we need to know that we are doing it in the best possible way.

So, can I get that commitment from you?

Mr. KERLIKOWSKE. I know that the discussion is underway about reports and what can be released. I would assure you that I would be responsive to these concerns, that I would institute the changes and the improvements in training policy and equipment that are necessary to bring a level of confidence, not only to the people in CBP, but also to the people whom we serve, and I would assure you of that, Senator.

Senator MENENDEZ. Mr. Chairman, I have one more question, if I may, please.

This is going to be very important to me as I decide. So, in following on, I would like to discuss CBP's detention facilities and conditions issues. I have visited some of these facilities.

We detain people because of the power of the Federal Government. And when we would detain someone—including, unfortunately, hundreds of cases that my office has seen of U.S. citizens and legal permanent residents unlawfully detained in immigration facilities because of the happenstance of who they are, where they live, and what they look like—it is unacceptable to have their constitutional rights violated.

So, when we have somebody in a detention facility, we do it by the power of the Federal Government, and their safety and security during that period of time is not delegable to anyone else. It is ultimately our responsibility.

Many of these facilities have reports of detailed denial of medical care, inadequate food and water, extreme temperatures in hold rooms, inadequate access to food, and a whole host of other issues. I am especially concerned about the numbers of unaccompanied minors suffering while in CBP custody.

Can you support a similar transparent effort to make sure that we have the appropriate standards and safeguards for the security of individuals we detain—sometimes U.S. citizens and legal permanent residents, unlawfully so—to ensure their safety and security? And will you work to make sure that these detention facilities, whether they are ones that we operate directly or that we contract out—and this is where most of the problems end up being, when we contract out—live up to a standard that we can respect to assure the safety and security of individuals who are there?

Mr. KERLIKOWSKE. Senator, if I am confirmed, I would very quickly undertake a personal review and inspection of some of these facilities, including those temporary detention facilities.

I would also tell you I have had a conversation with Dan Tangherlini from GSA about facilities and about the need for CBP, if I am confirmed, to work very closely with GSA on infrastructure and the type of facilities that are needed.

I would also undertake the medical review that you initiated.

Senator MENENDEZ. Thank you, Mr. Chairman. I appreciate it.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I just want to welcome the nominees who are before us here this morning.

I would like to, Mr. Kerlikowske, ask you or at least visit with you a little bit about something that I think you know, because we have talked about it in my office. But Senator Wyden and I have been engaged in ongoing dialogue with the CBP over the last few years regarding duties that have gone uncollected on imports of Chinese honey, garlic, crawfish, and mushrooms.

You and I discussed this issue when we met last year, and, while I greatly appreciate the effort that the CBP has made to work with my staff on this matter, I believe more remains to be done. Just as an example, on January 2nd, we received a letter from acting CBP Commissioner Winkowski that stated that there were roughly \$140 million in imports of Chinese honey between 2000 and 2007, and that there is more than \$100 million in bonds posted on these imports not yet collected. Yet, we still do not know how much of this amount is currently in litigation and how much is likely to be collected.

It is important, I would say, to the South Dakota honey producers that duties owed on these imports are collected, and I hope that, if confirmed, CBP will provide you a full accounting of the outstanding bonds at issue and that you will continue CBP's efforts toward a comprehensive collection strategy.

I want to ask a question. Last year, I introduced a bill that would increase the dollar limit below which imports are not subject to tariffs in formal entry procedures. It is known as the *de minimis* level. What the bill would do is, it would raise this level—which has not been updated in 20 years—from \$200 to \$800. It is a provision that is included in the Customs reauthorization bill that I hope this committee is going to consider at some point soon, and is supported by a broad range of companies, including express delivery companies like UPS and FedEx.

So my question is, would you agree that reducing the paperwork burdens on private companies and on CBP associated with imports is important and will have a positive economic benefit?

Mr. KERLIKOWSKE. Senator, every trade group—and I have met with UPS, FedEx, et cetera. Every trade group is very encouraged by the fact that automation is underway, and they have put their own time and their own resources into making sure that they will be a part of the ACE system and others.

Making things more transparent through automation, making them easier and more efficient and less costly, would be a major goal, if I am confirmed.

Senator THUNE. Well, hopefully, we can get you some legislation too that would help get that issue addressed in statute and get the law updated, which is 20 years old, as I mentioned.

In October of last year, I sent a letter to CBP regarding exclusion orders issued by the International Trade Commission under section 337 of the Tariff Act, which, as you know, deals with enforcement of intellectual property rights. And I was joined on that letter by Senators Wyden, Portman, and Cantwell. We sent the letter due to concerns from U.S. companies that these orders are not being effectively enforced.

The response I received indicates that CBP is in the process of making changes to how it implements these orders, such as by developing a process by which more parties that are impacted will

have an opportunity to make their views known to CBP. The letter states that CBP believes these process reforms will have, and I quote, "tremendous benefits."

Do you know when CBP intends to implement the reforms I just mentioned, and do you have any views regarding how CBP can better coordinate with the International Trade Commission regarding enforcement of exclusion orders?

Mr. KERLIKOWSKE. Senator, I have had briefings on some of this. I certainly do not know the answer to that question about when CBP would undertake and be responsive on the changes necessary. But those communities that have briefed me and the people within CBP are very intent on enforcing those rules.

I also know that it is complex, and it can be a bit problematic. If I am in the position and if I am confirmed, I would certainly make sure that the enforcement of all of the rules and regulations around that would take place.

Senator THUNE. Mr. Chairman, I have a couple of other questions, but they are questions I think I can submit for the record.

Thank you.

The CHAIRMAN. Thank you, Senator.

The next Senator to ask questions is Senator Carper. Senator Carper, as we all know, is chairman of the Homeland Security and Governmental Affairs Committee, and I must say he does a super job. I attend many meetings around here where Chairman Carper makes lots of good points about what they are doing at Homeland Security, and I must say he does a super job.

I might also say, Mr. Kerlikowske, he came up to me on the floor not too long ago and said, we have this great person, we have to get him confirmed right away, and it was you. He is a great advocate for the department, the former Governor from a great State.

Senator Carper, it is all yours.

Senator CARPER. Thank you, Mr. Chairman.

I would just say (this is off the record), when the word came out that Senator Baucus was going to be nominated to be Ambassador to China—we are very fond of him, and he does a great job—I told him, I walked up to him, and I said, "I am putting a hold on your nomination." [Laughter.]

Well, I had to get in the elevator and disappear, and he would pop back out, and he would say, "Oh no you're not." We are not going to put a hold on your nominations here today.

I must say, sitting next to this guy from Maryland, my friend, I am a bit jealous that we cannot claim any of you for our State, but we are honored that we can claim you for our country.

I want to, as chairman of the Homeland Security Committee in the Senate, I just want to focus more of my questions, more of my comments, if I may, on Mr. Kerlikowske.

Colleagues, it has been 5 years since we had a Senate-confirmed Commissioner. Think about that. Five years. Five years of acting folks in those positions. It is a very, very hard job on a good day, as you know, a huge job, with huge responsibilities. And to go 5 years without a Senate-confirmed Commissioner is, I just think, inexcusable.

We will not go into the details of why that has happened, but I am delighted we have a candidate with Gil's qualifications, with

his experience, with his knowledge, and with his leadership skills. We are just very, very fortunate, and thank you for your willingness to serve.

We work in a day, we work in a time where, even 5 years into this administration, we still have too often what I call executive branch Swiss cheese: leadership positions at the very top are vacant. In some cases, it is the responsibility of the administration for not nominating people and vetting them in a timely way. In other instances, it is our responsibility. So at least we are here and have you here today, and we have this hearing.

I just want to say, Mr. Chairman, thank you so much for expediting this hearing and bringing us to this occasion. My hope is that we can get you confirmed. We have a new leadership team in place at the Department of Homeland Security, with a new Secretary, a new Deputy Secretary, and I think you will be a great addition to that team.

If confirmed, Mr. Kerlikowske will not only be responsible, as we have heard here today, for facilitating legitimate travel and trade, but also for securing our land, air, and sea borders, as well as stemming the flow of undocumented illegal immigrants.

If I heard Mr. Thune over there right, he was talking about honey. And all kinds of commodities are coming into and out of our country. We are trying to patrol a 2,000-mile border on the border of Mexico, a 4,000-mile border on Canada, with tens of thousands of Border Patrol agents and many more who work in the ports of entry, to make possible two things: one, the expeditious movement of travel, trade, and tourism into and out of our country and, at the same time, to protect us from all kinds of evils.

It is a hard job, a hard job, and we are grateful that you are willing to work in that neighborhood.

With that having been said, I want to ask a couple of questions, Mr. Chairman.

First of all, if confirmed—and my hope is you will be, Gil—what would be maybe your three highest priorities as Commissioner? And, if you will, make sure that you work into there some comments about morale, morale of the troops. It is not good in the department. It is actually pretty good at CIS. That is the job that Alejandro Mayorkas had, head of the U.S. Citizenship and Immigration Services. Morale there is actually pretty good, but throughout the department it is not, and we have real concerns about morale in CBP.

So just talk about that and maybe your other three highest priorities, please.

Mr. KERLIKOWSKE. Morale is one of the ones that I mentioned—and I did not put them in any particular order—those four that I listed or went through in my oral testimony. I know that, looking at the Federal surveys, certainly DHS has been at the bottom. So there is really nowhere to go but up.

Having been in police departments and law enforcement agencies which often deal with morale issues, I know that close cooperation and communication, even though we will not always agree with the unions that represent the people in CBP, is going to be critical. And we need to have that open door and better internal communications with the employees. And I would undertake very quickly,

if I am confirmed, a rather lengthy visit to a number of our ports and a number of our locations to actually meet and talk with and listen—probably more importantly, to listen to the people who are actually doing the job.

So morale is particularly important. Using the resources that Congress has provided to improve efficiency, particularly through technology—whether it is in areas of tunnel detection, ports of entry, the kiosks, on and on—the technology is a game-changer for that.

I would also tell you that I think that, even though there has not been a confirmed Commissioner, the people who have served, and particularly the person whom I have been working with over these months, Acting Commissioner Tom Winkowski—with his 38 years of experience at CBP—I think have done a terrific job.

But there are a number of other, as you said, Swiss cheese or acting positions throughout CBP. So filling those positions, but also developing the education and the training and the leadership programs so that this would not continue on in the future, would be important to me.

Those would be three areas.

Senator CARPER. Great. Thank you. And I want to say publicly that we appreciate each of the people who has served in an acting capacity, acting as Commissioner for the last 5 years, but again, we need Senate-confirmed leadership, and we are happy that you are going to hopefully be able to provide that.

People a lot smarter than I have described CBP's security and trade facilitation missions as two sides of the same coin. The missions, as you know, are interrelated and frequently complementary. Occasionally, however, the security mission and the trade facilitation mission clash with one another and we see long lines at our land and our air and our seaports of entry.

Just talk with us a little bit about how you might go about balancing those two missions for CBP to ensure that, while we have meaningful, strong border protection on the one side, we do so without unduly restricting the trade that we know is important to all of our countries.

Mr. KERLIKOWSKE. Senator, I think that the potential for 2,000 additional agents at our ports of entry is absolutely critical. To reduce those wait times and to allow people through on legitimate travel would be particularly helpful and important.

Watching the CBP personnel at those ports of entry, and seeing the level of professionalism and courtesy that they show to people while in a very demanding job, is important, and I think they need to have the support and the recognition of the Commissioner for the work that they do 24/7 in these locations.

Cargo is also particularly important, and I know that CBP being stationed in over 40 countries, with the ability to do clearance of cargo before it ever arrives at our ports, to know that that cargo is not only going to be officially handled, but is also safe and does not contain hazardous material or threats, will be very important. Having worked in a city in which the entire port was in the downtown core, I recognize that very clearly.

Senator CARPER. Mr. Chairman, if I could just add one quick P.S. In less than an hour, we are going to be voting, as you know, on,

I think, the omnibus appropriations bill, which includes funding for the Department of Homeland Security, including a lot of money for CBP.

In the immigration reform bill that has passed, there are huge amounts of money to add to, literally double, the size of the force of the Border Patrol. I do not know that that is the best investment for our taxpayer dollars, but I do know that there are force multipliers, technology that is included—radar systems, VADER systems, all kinds of new aviation, lighter equipment as well—that is going to really enhance the ability of all those thousands of men and women who are working the Border Patrol for us, working the border for us, to be able to do their jobs better without adding the kind of debt to our Treasury.

So, thank you very much. I am pleased that you are willing to serve. I think if you are going to pick somebody out of central casting for this job, I think we have the guy.

Five years is a long time to wait, but you are worth waiting for. Thank you.

The CHAIRMAN. Thank you very much, Senator.  
Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

Once again, I thank all three of our nominees.

Mr. Kerlikowske, I want to follow up on Senator Menendez's point in a little broader context. As you point out in your testimony, if confirmed, you will head up the largest law enforcement organization in the United States. And the Federal Government needs to lead by example.

In the immigration reform bill that passed the U.S. Senate, we took up the issue of racial profiling, because we know how wrong it is, and that relates to some of the issues that Senator Menendez raised. But in a broader context, it compromises proper law enforcement; it compromises the support of communities that you need in order to be able to carry out the mission.

So can you share with this committee your commitment to deal with proper law enforcement, if you are confirmed, and to deal with the risk of racial profiling?

Mr. KERLIKOWSKE. Senator Cardin, I can certainly assure you that during my career as the police commissioner in Buffalo, working for Janet Reno, and here for 2 years in the COPS office as the deputy and then the 9 years in Seattle, the racial profiling issue is significant for a host of reasons.

No law enforcement agency is going to be effective at reducing crime or protecting people if they do not have the trust of the people whom they serve. And if people believe that they are being unfairly or unjustly targeted, they are not going to be cooperative in coming forward as witnesses. They are not going to report crimes. So it is an absolute tragedy if these things are not dealt with in a fair and transparent manner.

The programs and the processes that I put into place in Buffalo, that I worked with here in the administration with Attorney General Reno, and the work that we did in Seattle to be transparent, to provide outside review, to have video technology of every traffic stop that was made, are all ways of reporting back to the people



whom we serve that we are not going to tolerate unfair or unjust or improper tactics.

Senator CARDIN. Thank you for that answer. I would urge you to share that information, because I think it is helpful. When the large law enforcement agencies have developed the right procedures and the right oversight and they work, it gives more confidence to the local government law enforcement agencies.

I thank you for that answer, and I appreciate it very much.

Judge Marvel, when I was first elected to the House of Representatives, you were a practicing attorney in tax law, and you were very kind to give me advice on tax law. I was a young member of the Ways and Means Committee, and we talked frequently about ways that we can improve our tax code.

The chairman already asked you a question about the policy issue. I want to get to the administrative side just for one moment.

We have a new IRS Commissioner, recently confirmed. When I was in the House working with then-Congressman Portman, we tried to reform the IRS to make it more consumer-friendly. You talked about a consumer-friendly Tax Court.

I would hope you would share with us, not necessarily today, but be willing to share with us your views as to how we can improve the administration of our tax system. The policies are hard enough for us to figure out. And we certainly appreciate your views on policy.

But what can we do to make it easier for tax compliance and for the tax system to work in a more efficient way?

Judge MARVEL. Senator Cardin, by "we," you mean Congress?

Senator CARDIN. Yes.

Judge MARVEL. As a general proposition, I think Congress has done a very good job in setting an administrative framework that will permit the Internal Revenue Service to deal reasonably well with the taxpayers that it is serving.

One of the problems is that, if you do not have the tax people talking with the taxpayers in a realistic way, the communication breaks down, and the process then breaks down. Anything that could be done to improve the communication, the effectiveness of it, would benefit everybody who is involved in the compliance system, from audit all the way through to collection and into the Court. And I am just not sure how Congress could do much more than it already has done. It really needs the people involved to do a good job in working with each other to communicate.

Senator CARDIN. Well, we might ask you how we can do a better oversight job then, in following up on that.

If I may, Mr. Chairman, I would like to ask one question of Ms. Ashford, having to deal with access.

I think Judge Marvel properly pointed out that the people who will appear before your court, some will be very sophisticated and have very competent representation. Others will be there without that type of advantage, but will still have a concern. You are dealing with their livelihood; you are dealing with areas of major concern.

What commitment can you make to us that you will ensure equal access to all citizens to the Tax Court?

Ms. ASHFORD. Thank you for your question, Senator Cardin.

If confirmed as Tax Court judge, I will assure you that I will do the best job I can as a Tax Court judge to ensure that taxpayers are treated fairly, also expeditiously and impartially. I want to ensure that I work with taxpayers so they understand the system, get their day in court, and work with, as well, the government, the IRS, to resolve the tax controversies.

Senator CARDIN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I have one question for Mr. Kerlikowske, and that is with respect to northern border Customs issues. In the State of Montana, there are about 550 miles across the northern Montana border next to Canada. I think there are 12 border stations. Only three are open 24 hours a day.

In the legislation that Senator Hatch and I are urging the Congress to adopt, we are suggesting there be a pilot program to increase or look at the possibility of more border stations for underserved areas. It is not just the State of Montana that is underserved. There are other areas along the border that are underserved.

I know resources are stretched. This is largely a resource issue. But can you tell me what commitment you will make to assure that the underserved northern border areas also have adequate access to Canada and back to the United States, because it is a bit difficult in many parts of the country right now.

Mr. KERLIKOWSKIE. Senator, I am very much aware of this, having been to Montana several months ago—you were unable to join us—with Senator Tester, when that was made very apparent to me.

I think the idea that you have proffered of an experiment and whether or not it has benefits then to the economy both nationally, but also to that local economy, is one that I would, if confirmed, be very willing to undertake.

The CHAIRMAN. It is important. As you know, it is sort of a chicken-and-egg question. The more there is access, the more there is trade. Sometimes the department says, "Well, show us that there is going to be more trade, so we can open it up."

I am just suggesting that if we open it up, they will come. There is pent-up demand on both sides, and I urge you strongly to pursue those pilot projects.

I have no more questions. I thank all three of you, very, very, very much.

I somewhat apologize to you, Judge Marvel and Ms. Ashford, for all the questions that you did not get. That is a double-edged sword. But you have learned a lot about Customs and Border Protection.

So, if there are any litigants who appear before you, you are going to have a good background on what they are doing or not doing, et cetera.

But thank you very much. The American people really appreciate all that you do. They probably do not appreciate it enough, do not know how hard you work and how creative, say, you are, Judge Marvel, in your courtroom and in fashioning remedies that make a lot of sense and in being very sensitive to the litigants so you find the proper result.

So I just thank you for that.

I know, Ms. Ashford, you are going to do the same thing, and you are all just very bright, very intelligent, very capable, very dedicated people.

Just to speak on behalf of my State of Montana, the people whom I represent—and I think I can speak on behalf of others in the country—just thank you so, so much for your work and for the work you are about to undertake.

I think the most noble human endeavor is service. Each of us serves in different ways: family, friends, local community. It is service—that is what really distinguishes, I think, each of us as a person, and it is so important to our country.

People serve in different capacities, and you have all served in many capacities, and that seems to be your calling. On behalf of a lot of people, I just thank you very much for that dedication.

I know you are going to set a great example, the role model you are going to provide, so just thank you so much.

I know, I am just looking at you, Ms. Ashford, and I see your aunt over here, and she must have been a great role model for you, let alone your parents and everybody else in your life.

So thank you very much. We are going to try to get you reported out of this committee as quickly as possible. I am hoping just a matter of—I do not know, but very, very quickly, because it is important that you get on the job.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:49 a.m., the hearing was concluded.]



## **A P P E N D I X**

### **ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD**

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**Opening Statement of Tamara W. Ashford  
Nominee For Judge, United States Tax Court  
Senate Committee On Finance  
January 15, 2014**

Good morning Chairman Baucus, Ranking Member Hatch, and distinguished members of the Finance Committee. Thank you for the privilege of appearing before you today.

I am grateful to President Obama for nominating me, and I am grateful to you and to the Committee's outstanding staff for processing my nomination so promptly.

I would like to briefly introduce my family members who are with me here today. First, my parents, Ronald and Wenda Ashford, were able to travel here from Boston. My father is a retired high school teacher with the Quincy, Massachusetts public schools, having taught at the same school for over 35 years. Similarly, my mother retired after a nearly 40-year career at the Massachusetts General Hospital. They both instilled in me the passion for learning and a love for the law, as well as the values of working hard and being a good public servant, and I am thrilled that they could be here today. Their support has been invaluable, and I am grateful beyond what words can convey. I am also pleased to have my aunt, Bonnie Logan, join us today from Baltimore. Aunt Bonnie is an inspiration to me because of the imprint she has made and the barriers she has broken in tennis not only in North Carolina (where my she and my mother, together with their brother, were raised) but in the larger tennis world – a professional tennis player, notably Bonnie was the first black member of the Virginia Slims Tennis Circuit (which Circuit eventually became the basis for the later named WTA Tour); and she was among the first people of color to play in the South African Open Tennis Championships in Johannesburg, South Africa in 1972. I am grateful for her continuous support.

Most of my nearly 20-year career as a lawyer has been spent directly involved in the area of tax controversies and litigation. And I have experience in handling these types of matters from all sides – the Department of Justice, private practice, and the Internal Revenue Service. In private practice, my focus was on federal tax controversy and litigation matters, representing both corporate and individual taxpayers in the United States Tax Court, as well as other federal trial and appellate courts. Early in my career, as a civil tax appellate attorney with the Department of Justice's Tax Division, I briefed and presented oral argument in cases before the U.S. Courts of Appeals that were appealed from the Tax Court, as well as other federal courts. For the past few years, as the Deputy Assistant Attorney General for Appellate and Review in the Tax Division, I lead the team responsible for determining the Government's unified strategy with respect to civil tax appeals originating from the Tax Court and other federal courts. I also work to resolve civil tax cases through settlement or through concession. As an aside, I would like to take the opportunity to thank my boss, Assistant Attorney General Kathy Keneally, who is here today, for her leadership, support, and friendship. I owe a great debt of thanks to her for the fact that I sit here today as a nominee to the Tax Court.

Through my experiences, which also includes leadership positions held outside my professional work, I have come to understand what makes a good judge and amassed the temperament and skills to be an independent arbiter as a Tax Court Judge. If confirmed, I hope to continue to be guided by the values and principles instilled in me by my family and my past experiences – to work hard and to serve our nation’s tax system by resolving tax controversies fairly, impartially and expeditiously.

Thank you again for the opportunity to testify, Mr. Chairman. I am happy to answer any questions the Committee may have.

**SENATE FINANCE COMMITTEE  
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

**A. BIOGRAPHICAL INFORMATION**

1. **Name: (Include any former names used.)**  
Tamara Wenda Ashford
2. **Position to which nominated:**  
Judge, United States Tax Court
3. **Date of nomination:**  
9/18/2013
4. **Address: (List current residence, office, and mailing addresses.)**
5. **Date and place of birth:**  
December 19, 1968; Boston, Massachusetts
6. **Marital status: (Include maiden name of wife or husband's name.)**
7. **Names and ages of children:**
8. **Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)**

High School: Buckingham, Browne & Nichols, 1986  
College: Duke University, A.B., Public Policy Studies, 1991  
Law School: Vanderbilt University Law School, J.D., 1994; University of Miami School of Law, LL.M, Tax, 1997 (with a Certificate of Specialization in International Tax)

9. **Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)**

Maxwell, Martin, Freeman & Beason P.A. (became Maxwell & Hutson, P.C.)

- Position: Office Assistant (September 1988 – August 1991; during college academic years, employment would have been part-time)
- Location: Durham, North Carolina

Maxwell & Hutson, P.C.

- Position: Summer Associate (May – August 1992; August 1993)
- Location: Durham, North Carolina

Mezzullo & McCandlish, P.C.

- Position: Summer Associate (May – August 1993)
- Location: Richmond, Virginia

The Honorable John C. Martin, North Carolina Court of Appeals

- Position: Judicial Law Clerk (August 1994 – August 1996)
- Location: Raleigh, North Carolina

U.S. Department of Justice, Appellate Section, Tax Division

- Position: Attorney (August 1997 – October 2001)
- Location: Washington, District of Columbia

Office of Counsel to the President

- Position: Attorney-Advisor (on special assignment from DOJ Tax Division) (January 2000 – July 2000)
- Location: Washington, District of Columbia

Miller & Chevalier Chartered

- Position: Senior Associate (October 2001 – July 2004)
- Location: Washington, District of Columbia

Internal Revenue Service

- Positions: Assistant to the Commissioner (July 2004 – February 2007); Senior Advisor to the Commissioner, Large and Mid-Size Business Division (February 2007 – September 2008)



- Location: Washington, District of Columbia

Dewey & LeBoeuf, LLP

- Position: Counsel (September 2008 – August 2011)
- Location: Washington, District of Columbia

U.S. Department of Justice

- Positions: Deputy Assistant Attorney General for Appellate and Review, Tax Division (August 2011 – present);  
Acting Deputy Assistant Attorney General for Policy and Planning, Tax Division (January 2013 – Present);  
Principal Deputy Assistant Attorney General, Tax Division (March 2013 – present)
- Location: Washington, District of Columbia

10. **Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**

None

11. **Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**

None

12. **Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

1. Member, Association of Junior Leagues International, Inc. (June 2000 – present)
  - At-Large Representative, Governance Committee (June 2011 – May 2013)
2. Member, Junior League of Northern Virginia (June 2000 – present)
  - President (and Officer) (June 2008 – May 2009)
  - President-Elect (and Officer) (June 2007 – May 2008)
  - Membership Council Director (June 2005 – May 2006)
  - Treasurer/Finance Council Director (and Officer) (June 2004 – May 2005)
  - Treasurer-Elect (June 2003 – May 2004)
  - Board of Directors (June 2003 – May 2006; June 2007 – May 2009)
3. Member, Leadership Arlington (May 2008 – present)

4. Member, Friday Tax Lunch Group (January 2008 - present)
  5. Member, Tax Coalition (September 2004 – present)
    - Public Sector Chair (January 2006 – December 2006)
    - Board of Directors (January 2005 – December 2006)
  6. Member, American Bar Association, Tax Section (January 2002 – December 2004; January 2008 – December 2011)
    - Court Procedure and Practice Current Developments Subcommittee Chair (June 2003 – August 2004)
  7. Member, District of Columbia Bar Association (September 2002 – present)
    - Member, Tax Section (September 2002 – December 2004; January 2008 – present)
  8. Member, Duke DC (September 1997 – present)
  9. Member, Phi Alpha Delta Legal Fraternity (January 1992 – May 1994)
    - President (August 1993 – May 1994)
  10. Member, Iron Dukes (July 1991 – December 1996; July 2012 – present)
  11. Member, Black Law Students Association (August 1991 – May 1994)
  12. Member, Alpha Kappa Alpha Sorority, Inc. (April 1988 – May 1991)
  13. Borromeo Housing, Inc. Board of Directors (July 2009 – present)
    - Treasurer (and Officer) (September 2009 – present)
    - Note:
      - Borromeo Housing, Inc. is an Arlington, Virginia-based non-profit organization that empowers young single mothers to create a self-sustaining future through education, counseling and support, while they reside in the organization's safe home.
13. **Political affiliations and activities:**
- a. **List all public offices for which you have been a candidate.**

None.
  - b. **List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.**

None.

- c. **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.**

John Kerry for President Campaign, \$200 (June 2004)  
 Barbara Favola for Virginia State Senate Campaign, \$50 (June 2011)  
 Obama for America, \$200 (November 2011)  
 Obama for America (2012 campaign cycle), \$1,026 (various times in 2012)

14. **Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)**

1. Certificate of Specialization in International Tax, University of Miami School of Law;
2. Recipient of an SES performance award, 2005, 2006 and 2007;
3. Recipient of the Sheldon S. Cohen National Outstanding Support to the Office of Chief Counsel Award, 2006;
4. Recognized for Tax Controversy by the 2010 edition of The Legal 500;
5. Recipient of the Best Executive and Leadership Involvement Award in Small Agency/Campaign Category (recognizing the superior involvement of one individual in senior leadership) from the 2012 Combined Federal Campaign of the National Capital Area;
6. Named a 2012 Person of the Year by Tax Analysts (one of ten selected individuals; first time an individual from the Division has been so named)

15. **Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)**

I have done my best to identify titles, publishers, and dates of all books, articles, reports, or other published materials, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

1. Co-Author, "IRS Releases Preliminary Guidance on the Implementation of the FATCA Provisions, Seeks Additional Public Input," *Practical International Tax Strategies* (August 2010);
2. Co-Author, "Update for Small Biotech and Pharmaceutical Companies: Treasury Publishes Guidelines for Qualifying Therapeutic Discovery Project Program, Sets July 21 Deadline for Applications," *Practical US/Domestic Tax Strategies* (May 2010);

3. Co-Author, "Recent U.S. Tax Bills Target Offshore Tax Abuse," *Journal of International Taxation* (April 2010);
  4. Co-Author, "HIRE Act Introduces Significant US Tax Law Changes," *Derivatives Financial Products Report* (April 2010);
  5. Co-Author, "Recent Tax Bills Targeting Offshore Tax Abuse Seek Increased Transparency, Enhanced Reporting, Stronger Penalties, and Scrutiny of Certain Derivatives," *Derivatives Financial Products Report* (January 2010);
  6. Co-Author, "Baseball and Taxes: United States Makes Similar Agreements with France and Germany Detailing Mandatory Binding Arbitration Procedures for Unresolved Competent Authority Disputes," *Practical US/International Tax Strategies* (January 15, 2009);
  7. Author, "Increased Cooperation between the IRS and Foreign Tax Administrations has led to Increased Exchange of Tax Information," *Practical US/International Tax Strategies* (November 2008);
  8. Co-Author, "New Rules for Tax Opinions and Penalty Protection: The Proposed Revisions to Circular 230 and the Final Penalty Regulations," *CCH Journal of Tax Practice & Procedure* (February-March 2004)
16. **Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)**
1. 37th Annual Federal Bar Association Section on Taxation Tax Law Conference, featured speaker (March 1, 2013, Washington, District of Columbia);
  2. ABA Section of Taxation, Court Procedure and Practice and Administrative Practice Committees Luncheon, keynote speaker (February 17, 2012, San Diego, California);
  3. Villanova University Law Review Norman J. Shachoy Symposium, opening keynote speaker (September 23, 2011, Villanova, Pennsylvania)
17. **Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)**

For over a 15 year-span, I have been directly involved in tax controversy and litigation from all sides – the Department of Justice, private practice, and the Internal Revenue Service. In private practice, my focus was on federal tax controversy and litigation matters involving a variety of domestic and

international tax matters – from, for example, foreign tax credit and transfer pricing issues to issues relating to the characterization of income and depreciation of tangible property, to innocent spouse and collection due process issues, and to issues relating to multiple employer welfare benefits plans; all issues within the jurisdiction of the Tax Court. I have litigated several of these aforementioned issues in the Tax Court.

Additionally, early in my career, as a civil tax appellate attorney with the Tax Division of the Department of Justice, I briefed and presented oral argument in cases before the U.S. Courts of Appeals that were appealed from the Tax Court (as well as other federal courts). And now, for the past few years, as the Deputy Assistant Attorney General for Appellate and Review, I serve as the Department's top appellate tax strategist, working to determine the Government's unified strategy with respect to civil tax appeals originating from the Tax Court (in addition to other federal courts). It is through those experiences, as well as my leadership experiences outside of my professional work, that I have amassed the temperament to be an independent arbiter as a Tax Court judge and makes me uniquely qualified to serve as a Tax Court judge, if confirmed.

**B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. **Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**

Yes

2. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

No

3. **Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**

No

4. **If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.**

Yes

**C. POTENTIAL CONFLICTS OF INTEREST**

1. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Administrative Office of the U.S. Courts (AOUSC) designated agency ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

2. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Administrative Office of the U.S. Courts (AOUSC) designated agency ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

3. **Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.**

I have engaged in no such activities.

4. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Administrative Office of the U.S. Courts (AOUSC) designated agency ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

5. **Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.**
6. **The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:**

**Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.**



**D. LEGAL AND OTHER MATTERS**

1. **Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.**  

No
2. **Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.**  

No
3. **Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**  

No
4. **Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.**  

No
5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**  

None to my knowledge.

**E. TESTIFYING BEFORE CONGRESS**

1. **If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?**

Yes

2. **If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?**

Yes

*Questions for the Record from the Senate Committee on Finance  
Tamara Ashford, Nominee, Judge, U.S. Tax Court  
Hearing Held January 15, 2014*

**Question From Senator Hatch:**

**Question 1:**

**As a Tax Court judge you will preside over many cases that involve unsophisticated taxpayers with few resources to deploy while making their cases. What lessons do you take from your prior professional experiences to ensure that you treat these taxpayers with respect and understanding while stopping short of awarding them an unfair advantage?**

**Answer:**

My prior professional experiences span nearly 20 years in tax controversy and litigation, and encompass working in that area from both sides – as an attorney representing private sector taxpayers and representing the Government. From these varied experiences, I have come to understand what makes a good Tax Court judge. A Tax Court judge should decide cases fairly, impartially, and expeditiously by using established tax law and using the facts established in each case. This will ensure that even unsophisticated taxpayers with few resources to deploy while making their cases are treated with respect and understanding while stopping short of awarding them an unfair advantage.

**COMMITTEE ON FINANCE**  
**NEWS RELEASE**



**Max Baucus (D-Mont.)**  
<http://finance.senate.gov>

**Hearing Statement of Senator Max Baucus (D-Mont.)**  
**Regarding the Nominations of Gil Kerlikowske, Paige Marvel and Tamara Ashford**  
*As prepared for delivery*

Senator Henry Clay, who was the chairman of this committee in 1841, once said, "Government is a trust, and the officers of the government are trustees – and both the trust and the trustees are created for the benefit of the people."

The three individuals here today are dedicated public servants, in Senator Clay's words – trustees working hard for the benefit of the people. They are experts in their fields and if confirmed, they will bring an impressive array of diversity and experience to the job at hand.

Gil Kerlikowske has been nominated to serve as commissioner of the United States Customs and Border Protection, often referred to as CBP. This agency enforces the country's trade and border security laws.

If confirmed, Mr. Kerlikowske will be entrusted with developing policy that has broad effects on America's economy and safety – a charge he is highly qualified to execute.

Mr. Kerlikowske has spent his career in public policy and law enforcement. Most recently, he was the director of the Office of National Drug Control Policy. Before that, he served as the chief of police in Seattle.

His decades of experience will help ensure our nation's borders are secure, flexible, and utilizing the latest technologies.

This committee has jurisdiction over international trade, and CBP plays a crucial role in maintaining the flow of trade across our borders. CBP processes nearly \$2.5 trillion worth of goods every year, and it must ensure this process is thorough and efficient.

CBP's director must consult regularly with Congress, federal agencies, and the many businesses that rely on trade. This committee takes CBP's mandate to consult with Congress very seriously.

Senator Hatch and I introduced a customs reauthorization bill last year. The bill is intended to help CBP prioritize its trade facilitation and enforcement functions, and it provides additional tools and resources to help the commissioner do so. If Mr. Kerlikowske is confirmed, close communication with this committee will be important.

Also with us today are Tamara Ashford and Paige Marvel. Both are nominated to serve as Judges on the United States Tax Court. Judge Marvel, in fact, has been nominated to serve a second term.

The tax court gives Americans a venue and a voice to address legitimate tax concerns. It helps guarantee fair administration of our tax laws, and it hears 30,000 cases each year. It is a cornerstone of America's tax system.

Judges must be willing to put in long hours and endure a busy travel schedule. They hear cases in 74 cities across the country and they spend weeks at a time away from their homes and families. The job is difficult, but Ms. Ashford and Judge Marvel are the right people to take it on.

Prior to joining the court, Judge Marvel had a distinguished career in the private sector. She has proven herself on the tax court, and she deserves support for a second term.

Ms. Ashford currently serves as the deputy assistant attorney general for appellate and review in the Tax Division at the U.S. Department of Justice. She has a sterling track record of public service that she will carry with her to the tax court, including at the IRS and Department of Justice. And like Judge Marvel, she has valuable experience in the private sector.

With their confirmations, the tax court will have a full complement of nineteen judges for the first time since 1999.

So as we consider these nominations, let us remember Henry Clay's words – that government is a trust, and the officers of the government are trustees working for the benefit of the people. I thank all three nominees for joining us here today, and I hope this committee can act on these nominations quickly.

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**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER  
U.S. SENATE COMMITTEE ON FINANCE HEARING OF JANUARY 15, 2014  
NOMINATIONS OF R. GIL KERLIKOWSKE, L. PAIGE MARVEL,  
AND TAMARA WENDA ASHFORD**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following remarks during a Senate Finance Committee hearing considering the nominations of the Honorable L. Paige Marvel and Tamara Ashford to serve as Judges of the U.S. Tax Court and F.R. Gil Kerlikowske to be Commissioner of Customs at the U.S. Department of Homeland Security:

Trade is essential to the growth of the U.S. economy. And U.S. Customs and Border Protection (CBP) is at the center of ensuring that legitimate trade flows smoothly and efficiently.

This task goes back to 1789 when the First Congress created the first agency of the federal government with the responsibility of collecting import duties. This first U.S. customs agency would go on to come under the direct authority of the Secretary of the Treasury.

Following passage of the Homeland Security Act of 2002, CBP was created and is the unified border agency with the dual missions of facilitating trade and securing our borders against terrorism. These missions are performed by a workforce of almost 60,000 dedicated federal employees.

With these important missions, it is vital that CBP has the proper leadership in place. That starts with the head of the agency.

Unfortunately, CBP has been without a Senate-confirmed commissioner since 2009. Last year, I called upon President Obama to nominate a commissioner, and to appoint someone with a strong background in trade.

Mr. Kerlikowske, your background is in law enforcement and not in trade. However, from our conversations, I am confident that, if you are confirmed, your lack of a trade background will not prevent you from making sure that the trade functions of CBP receive the same priority as the security functions. I think you recognize that trade is essential to the growth of our economy and that a strong economy is essential to our nation's security.

In addition to trade, intellectual property is also an important part of the U.S. economy. Therefore, I will continue to support CPB's efforts to ensure that strong enforcement of our nation's intellectual property laws remains a high priority for the agency.

In March of last year, Senator Baucus and I introduced the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013. If enacted, our bill would help to modernize CBP by

making sure that it has the authority and tools necessary to carry out its trade facilitation mission. We have received good feedback on the bill, and I hope the Finance Committee will be able to consider our legislation very soon.

Mr. Kerlikowske, if confirmed, I hope that you will work closely with this committee to ensure that CBP fulfills its proper role in facilitating and promoting trade.

The United States Tax Court does not go quite as far back in our history as the first U.S. customs agency, but it is a very important part of our tax system.

It is the only venue for taxpayers who want to challenge an assessed tax liability before payment. Unlike many federal government entities, the Tax Court goes wherever the taxpayers are, with judges hearing cases in many cities throughout the country.

Tax Court judges deal with the individual taxpayers face-to-face and actually speak to and hear from them in person. Very few nominees that we consider in this committee will have that kind of interaction.

Keeping the court staffed with qualified judges helps provide faster and better accountability to taxpayers. If both of the nominees we will hear from today are confirmed, the Tax Court will have a full complement of 19 judges.

Judge Marvel, having already completed one term on the Tax Court, has fortunately agreed to serve a second term. The Finance Committee has consistently encouraged the reappointment on Tax Court judges in order to preserve expertise and continuity in what is a very complicated area of policy.

This is not to say that new judges are not important or welcome, of course, but experience is valuable.

Tamara Ashford already has an extensive experience in the tax arena, having worked in private practice, for the Internal Revenue Service, and now for the tax division at the Justice Department. As she noted in a speech she gave last year, she has seen tax practice from both sides of the table.

Indeed, I think we have before us two very qualified Tax Court nominees. Mr. Chairman, thank you, once again, for holding this hearing today.

###

**STATEMENT OF RICHARD G. KERLIKOWSKE  
NOMINEE TO BE COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION,  
BEFORE THE UNITED STATES SENATE COMMITTEE ON FINANCE**

Chairman Baucus, Senator Hatch, and distinguished Members of the Finance Committee, it is a privilege to appear before you today as the President's nominee for Commissioner of U.S. Customs and Border Protection (CBP).

When I enlisted in the Army in 1970, I took an oath to protect our country. I have upheld that duty for over 40 years as a police officer and ultimately police chief in two of our major cities. During my service as Director of the Office of National Drug Control Policy (ONDCP), I have worked tirelessly to reduce the problem of drug abuse both domestically and internationally.

I am deeply honored that the President nominated me to lead CBP, the largest law enforcement organization in the United States. With its border-related responsibilities, powerful legal authorities, and astounding human and technical resources, CBP is of paramount importance to the Nation's national security and economic prosperity. As such, it is vitally important that the policies and conduct of the agency be transparent to the American people and Congress.

CBP's dual mission is to secure the borders while facilitating legitimate trade and travel. While we must never sacrifice security, it is important to understand that the goals of security and facilitation can and should be mutually reinforcing. CBP's security mission is clearly far-ranging. Most importantly, it is responsible for preventing terrorists and their weapons from entering the United States. CBP is also charged with enforcing our Nation's immigration laws and interdicting a range of cross-border threats, including illegal drugs and agricultural pests and diseases. Of particular note, we need to work to interdict weapons and money destined for the coffers of trans-national organized criminal organizations. Disrupting these flows of money and weapons is an effective force-multiplier.

Equally important – and of particular interest to this Committee -- are CBP's historic customs responsibilities. CBP enforces over 500 laws for 47 federal agencies, processes more than \$2.3 trillion in international trade, and collects more than \$40 billion annually in customs revenue. CBP's enforcement and regulatory activities can, and often do, have a major impact on the global economy and its partners in government and the private sector.

My position at ONDCP has included responsibility for authoring the Northern Border Strategy and the Southwest Border Counter Narcotics Strategy. These plans require not only the participation but the active support of multiple federal government organizations, from the Department of Justice to the Department of Defense. ONDCP has excelled in bringing a wide array of agencies to the table to support these plans and holding them accountable for performance. I have traveled to over a dozen countries



and met with heads of state, customs and border officials, and law enforcement counterparts to engage in bilateral and multilateral programs to decrease drug trafficking.

I believe that during the almost five years of service leading ONDCP I have made transparency, responsiveness, and communication with Congress hallmarks. If confirmed, I will continue that record with this Committee and all members of Congress. Since my nomination, I have had the privilege to meet and get acquainted with many members and staff of this Committee. I have also had an opportunity to meet many members of the CBP Commercial Operations Advisory Committee (COAC), trade associations, and companies that have a stake in CBP's leadership and future direction. I assure you that this is the beginning of collaboration with Congress and the international trade community that will, if I am confirmed, continue and deepen. That is a commitment.

My experience in law enforcement – as an officer, major city police chief, and ONDCP Director – has taught me that law enforcement and commerce are interconnected. Commerce depends on a consistent, stable, and predictable environment for business, and law enforcement plays a critical role in creating and protecting those conditions. As a major city chief, I quickly came to understand that a police department needs to foster a safe and welcoming environment for business and visitors. It also needs to inspire public confidence. As complex as it is, CBP's law enforcement role is the same. I also look forward to continuing my work with other federal agencies in maximizing the effectiveness of CBP as the executive agent at U.S. ports of entry.

In my conversations with leaders in the trade community, I have consistently heard that CBP has made real strides to modernize, simplify, and make more uniform its trade and business processes. If confirmed, I intend to build on that foundation. It is clear to me that these efforts have real potential to foster economic prosperity and security. CBP needs to be in the forefront. Critical to that effort is CBP's international engagement to harmonize and simplify customs practices around the world, as well as its efforts to minimize transaction costs to the greatest degree possible. I look forward to working with this Committee on these goals.

If confirmed, I intend to focus on several border security and trade-related priorities. I would note that my ordering does not indicate a ranking order – I believe all of these priorities are extremely important and should be worked toward vigorously.

- CBP needs to continue its efforts to transform its business processes, eliminating paperwork, expanding enrollment in trusted traveler programs, and deploying technology to minimize wait times at ports of entry. Time is money, not only for cargo but also for international travelers who wish to visit the United States. These visitors create tremendous economic growth and support jobs – we need to do everything possible to welcome them expeditiously and efficiently. The President's budget request recognizes that additional CBP officers are necessary to meet requirements at ports of entry. If confirmed, I will work with Congress to

ensure that we make this important investment in human resources for our security and economic prosperity. In my own reading, I have noted projections that global trade will expand by 8% annually through 2030. Of additional note, infrastructure trade is projected to grow at a rate of 9% and will account for over 50% of all goods traded globally. This type of commercial activity means economic growth and jobs for Americans. We need to insure that our ports are up to this task and capable of helping the United States capitalize on these opportunities.

- CBP – through the Border Patrol - needs to continue to use information, integration, and rapid response to meet all threats between ports of entry. Critical to this enterprise are CBP's cooperation and operational planning with international, federal, state, local and tribal partners. Promoting such cooperation has been a hallmark of my tenure as ONDCP Director, and I intend to continue that emphasis if confirmed as CBP Commissioner. Technology also plays a crucial role in this area, and, if confirmed, I will constantly push for ways to maximize your investments in CBP's Information Technology and technical resources.
- As ONDCP Director, I have personally observed the significant contributions of CBP's Air and Marine operations in the Nation's counterdrug mission, along the borders and in the transit zone. CBP needs continued investment in these capabilities, not only in support of the counterdrug mission, but to bolster targeted anti-terrorism and law enforcement missions undertaken by CBP and its investigative partners both inside and outside the Department of Homeland Security.
- CBP needs to continue to prioritize completion of the Automated Commercial Environment (ACE) and International Trade Data System (ITDS). This will establish a modern, flexible, automated foundation for the efficient transmission of data to all U.S. government agencies with a border nexus, ensuring the efficient entry and release of cargo.
- CBP needs to modernize its export process in support of the President's National Export Initiative to streamline exports and foster growth for U.S. companies. This needs to be done in close collaboration with CBP's private sector, government, and international partners.
- CBP needs to focus its enforcement resources to protect domestic producers from unfair competition, to ensure that innovative national technologies and brand names are protected from threats, and to protect domestic consumers from unsafe, substandard products. I look forward to working with the Committee on this priority.
- CBP needs to build and retain a world class, knowledge-based trade workforce to interact effectively with the public and the trade community to insure the

physical and economic security of the nation. Critical to this effort will be addressing morale challenges agency-wide that have been identified in the Federal Employee Viewpoint Survey. CBP's employees are its most important resource; their training, development, and effective management require sustained leadership attention. If confirmed, this too will be a major priority.

Thank you once again for the opportunity to appear before you today, and I respectfully ask for your support to confirm me for this position. I look forward to answering your questions.

1. **Name: (Include any former names used.)** Richard Guilford Kerlikowske, Jr.
2. **Position to which nominated:** Commissioner, U.S. Customs and Border Protection
3. **Date of nomination:** 1 August 2013
4. **Address: (List current residence, office, and mailing addresses.)**  
  
Home:  
  
Office:
5. **Date and place of birth:** 23 November 1949 – St. Joseph, Michigan
6. **Marital status: (Include maiden name of wife or husband's name.)**
7. **Names and ages of children:**
8. **Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)**  
  
St. Petersburg Junior College  
St. Petersburg, FL  
1/1969-1978 – AA/Police Administration – 1978

University of South Florida  
Tampa, FL  
1972-1978 – BA/Criminal Justice – 1978

University of South Florida  
Tampa, FL  
1978-1985 – MA/Criminal Justice – 1985

*Note: With the exception of my first year in college in St. Petersburg, I attended college part-time under the G.I. Bill. My education began in 1969 and was completed in 1985 due to service in the military and part-time status while working as a police officer.*

**9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)**

United States Army – Fort Belvoir  
Specialist 4<sup>th</sup> Class  
Alexandria, VA  
2/1970-2/1972

St. Petersburg Police Department  
Officer, Detective, Sergeant and Lieutenant  
1300 1 Avenue North  
St. Petersburg, FL 33705  
2/1972-7/1987

*Note: While employed by the St. Petersburg Police, I was named to a Visiting Fellowship at the National Institute of Justice (USDOJ) from August 1984-July 1985. My salary, benefits, and pension were continued from the St. Petersburg Police, but were reimbursed by the program.*

St. Petersburg Community College  
Adjunct Professor, Criminal Justice  
6605 5<sup>th</sup> Avenue North  
St. Petersburg, FL 33710  
1986

Port St. Lucie Police Department  
Chief  
121 SW Port St. Lucie Blvd. – Bldg. "C"  
Port St. Lucie, FL 34984  
7/1987-1/1990

Indian River Community College  
Adjunct Professor, Criminal Justice  
3209 Virginia Avenue  
Fort Pierce, FL 34981  
1988

Fort Pierce Police Department  
Chief  
920 South U.S. Highway 1  
Fort Pierce, FL 34954  
1/1990-1/1994

Florida Atlantic University  
Adjunct Professor, Criminal Justice  
777 Glades Road  
Boca Raton, FL 33431  
1990

Buffalo Police Department  
Commissioner  
74 Franklin Street  
Buffalo, NY 14202  
1/1994-7/1998

Buffalo State College  
Adjunct Professor, Criminal Justice  
1300 Elmwood Avenue  
Buffalo, NY 14222  
1995-97

U.S. Department of Justice  
Deputy Director/Community Oriented Policing Services  
1100 Vermont Ave, NW  
Washington, DC 20005  
7/1998-8/2000

Seattle Police Department  
Chief  
610 Fifth Avenue  
Seattle, WA 98124  
8/2000-5/2009

Seattle University  
Adjunct Professor, Criminal Justice  
901 12<sup>th</sup> Avenue  
Seattle, WA 98122  
2002-09

Executive Office of the President/Office of National Drug Control Policy  
Director  
Washington, DC 20016  
5/2009-present

**10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**

None.

**11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**

I have lectured on leadership and executive development before the Maryland Police Chiefs and served on a panel on community and police relations sponsored by the Rosenkranz Foundation.

**12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

- International Association of Chiefs of Police – 1987-current
- National Executive Institute Alumni-FBI – 1995-current
- Fight Crime: Invest in Kids, Washington, DC, National Board Chair – 2000-2009
- Salvation Army, Fort Pierce, FL, Buffalo, NY, Advisory Board, 1994-98; Seattle, WA, Advisory Board, 2001-09
- United Way – Fort Pierce, FL, Board Member and President, 1990-94
- United Way of King County – Seattle, WA, Advisory Board, 2004-08
- Boy Scouts of America, Fort Pierce, FL and Buffalo, NY, District Commissioner, 1992-1993 (Ft. Pierce) and 1995 (Buffalo)
- Hearing, Speech and Deafness Center, Seattle, WA, Advisory Board, 2002-06
- St. Mary's School for the Deaf, Buffalo, NY, Board Member, 1995-98
- Hospital Corporation of America, Port St. Lucie, FL and Fort Pierce, FL, Board Member, 1988-92
- Natl. Conference of Christians and Jews, Buffalo, NY, Board Member, 1994-98
- Rape Crisis Center, St. Petersburg FL, Chair, Advisory Committee, 1984-86

- Center Against Spouse Abuse (CASA), St. Petersburg, FL, Board Member, 1984-86
- School Superintendent's Advisory Committee, Fort Pierce, FL, Board Member, 1991-92
- Fort Pierce-Port St. Lucie Chamber of Commerce, Board Member, 1990-94
- "Success by 6", Buffalo, NY, Board Member, 1996
- Adult Literacy Program, Port St. Lucie, FL, Teacher, 1988
- Police Executive Research Forum, Member 1984
- Downtown Rotary Club, Seattle, WA, Honorary Membership accorded to the Police Chief, 2000-2009
- Safe Call, Washington State, Participant, 2007
- Washington Athletic Club, Seattle, WA, Member, 2000-present

*Note: the dates listed above are approximate as I volunteered at these organizations during my time in law enforcement*

13. **Political affiliations and activities:**

a. **List all public offices for which you have been a candidate.**

None.

b. **List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.**

None.

c. **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.**

*Note: contributions are joint with my wife*

- Obama Victory Fund – \$500.00 – 10/19/2008\*
- Obama for America - \$500.00 – 10/19/2008\*
- Onek for District Attorney (San Francisco) – \$500.00 – 10/25/2010
- Murray for Senate – \$1,000.00 – 8/17/2010
- Cerda for Clerk (City of Chicago) – \$250.00 – 1/23/2007
- Friends for Mike McGavick (Senate) – \$250.00 – 5/26/2006
- Democratic National Committee - \$500.00 – 8/18/2004

\*one check, divided by Obama Campaign for FEC reporting purposes



**14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)**

- American Medical Association, Nathan Davis Public Service Award (2011)
- Impact Award National Methamphetamine and Pharmaceutical Initiative (2012)
- Lifetime Award for Border Security (2010)
- Honorary Doctor of Humane Letters, University of South Florida (2010)
- Community Service Award, Association of Hispanic Chambers of Commerce (WA) (2008)
- Seattle University Community Leader Award (2008)
- James V. Cotter Award for Excellence (Commission on Accreditation of Law Enforcement Agencies) (2007\*)
- Friend of Freedom Award, Council on American-Islamic Relations (2006\*)
- Leadership Award, Police Executive Research Forum (2006)
- Person of the Year Award, Ceasefire (2006\*)
- Brotherhood Sisterhood Award, The National Conference of Christian and Jews (1998)
- Gary P. Hayes Award for Innovation in Policing, Police Executive Research Forum (1991)
- Attorney General's Award (Florida), Outstanding Crime Prevention Unit (1988 and 1990)
- Visiting Fellow, National Institute of Justice, U.S. Department of Justice (1983)
- U.S. Army, Presidential Service Badge (1972)
- U.S. Army, Expert Rifle Award (1970-72)
- U.S. Army, National Defense Service Medal/Certificate (1970-72)
- Honor Graduate, Outstanding Military Police Officer (1970)

*\*Approximate dates.*

**15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)**

I have done my best to identify titles, publishers, and dates of all books, articles, reports or other published materials, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

- Commentary, *Commentary on Voas et al. (2011): Drug-free roadways – can we get there from here? Steps to reducing drugged driving in the United States*, Society for the Study of Addiction, Volume 106, Issue 7, pp. 1228–

1229 (July 2011)

- Report, A Note on the 2008 Crime Statistics, Seattle Police Department (2009)
- Op-ed, with John Lovick, Restore Voting Rights to Ex-Felons, Seattle Post-Intelligencer (13 Feb 2009)
- Report, A Report to the Community: Thank You for Helping Us Do Our Jobs Better, Seattle Police Department (14 Sep 2008)
- Article, Safe at Home-Policing the United States Homeland in a post-9/11 Environment, Crime/Law/Social Change, vol. 50 (1 July 2008)
- Report, A Report to the Community: Message from Chief Gil Kerlikowske, Seattle Police Department (16 Sep 2007)
- Article, NetSmartz: A Comprehensive Approach to Internet Safety and Awareness, R. Gil Kerlikowske; Malinda Wilson, The Police Chief (April 2007)
- Op-ed, Confronting Domestic Violence, The Seattle Times (26 Apr 2007)
- Op-ed, A Research-Based Pursuit of Safer Law Enforcement, The Seattle Times (1 September 2006)
- Op-ed, Starting Kids Early on a Path to Success, Seattle Times (22 Feb 2006)
- Article, Co-Author, MCC Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies, Major Cities Chiefs Association (2006)
- Letter To the Editor, Reducing Criminality, New York Times (4 Jul 2005)
- Leading Beyond Tradition: A Breakthrough Strategy for Law Enforcement, William E. Cooper, Foreword by Gil Kerlikowske (2005)
- Report, Seattle Police Department Strategic Plan, Seattle Police Department (2004)
- Op-ed, Renew Assault-Weapons Ban, republished in The Seattle Times (25 Aug 2004)
- Op-ed, Save the Assault Weapons Ban, Christian Science Monitor (24 Aug 2004)
- Article, End of Community Policing: Remembering the Lessons Learned, FBI Law Enforcement Bulletin Volume: 73 Issue: 4 Dated: April 2004 pp. 6-10 (April 2004)
- Article, Co-author, Protecting Your Community from Terrorism, Vol. 2, Working with Diverse Communities, Strategies for Local Law Enforcement Series, Washington, DC 20036 (2004)
- Report, Bullying Prevention Is Crime Prevention, A Report by Fight Crime: Invest in Kids (2003)
- Op-ed, Limiting Cases of Criminal Injustice, Bob Boruchowitz and Gil Kerlikowske, Guest Columnists, Seattle Post-Intelligencer (27 Feb 2003)
- Op-ed, Federal Cuts Hurt Crime Fight, The Seattle Times (12 Nov 2003)
- Op-ed, Expulsion Not Only Solution, Daily Oklahoman (29 Sep 2003)
- Op-ed, Setting the Record Straight on Mardi Gras Violence, The Seattle

- Times (6 March 2001)
- Letter to the Editor, *A Sound Investment*, U.S. News and World Report (29 May 2001)
  - Report, *SPD Special Report: Addressing the Issue of Racial Profiling-One Year Later*, Seattle Police Department/R. Gil Kerlikowske (Aug 2001)
  - Letter to the Editor, on *Support for Early Childhood Programs*, Newsweek (6 Nov. 2000)
  - Report, *A Less Lethal Options Program for Seattle Police Department: A Report with Recommendations*, Seattle Police Department/R. Gil Kerlikowske, Clark Kimerer (Sep 2000)
  - Op-ed, *A Powerful Weapon Against Crime: Investing in Quality After-School Programs*, Albany Times Union (26 Feb 1998)
  - Article, *Want to Really Cut Crime? Provide the Care Kids Need So They Won't Become Criminals*, Buffalo News (18 Feb 1998)
  - Op-ed, with Elliot Richardson on *Ways to Prevent Crime*, Boston Globe (1996 est.)
  - Monograph, *Understanding Community Policing: A Framework for Action*, Bureau of Justice Assistance, NCJ 148457 (Aug. 1994)
  - Letter to the Editor, *Modern Policing*, U.S. News and World Report (30 Aug 1993)
  - Article, *Community Survey: An Assessment of Police Services and Performance*, Chief R. Gil Kerlikowske and Captain Brian E. Reuther, Florida Police Chief (Dec. 1989)
  - Book, *Community Close-Up: Buffalo's Neighborhood Initiatives; Community Policing: A Contemporary Perspective*, date not available

*Note: During my tenure as ONDCP Director, my name is required to be listed as author on numerous official reports compiled by the Office.*

16. **Speeches:** (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

None.

**17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)**

I understand the Commissioner of Customs and Border Protection's (CBP) role in protecting our borders and promoting trade as part of the economic and physical security of our country. It is of critical importance to our nation's security, and I look forward, if confirmed, to bringing my experience in local law enforcement, in leading law enforcement organizations in major cities located in border states, and as the Director of the Office of National Drug Control Policy, to that position.

I started my career in the U.S. Army and put myself through college on the G.I. Bill while working as a police officer. I know what it takes to successfully work on the frontline of local law enforcement and how to effectively manage large operations with varying missions. I took an oath to protect the U.S. Constitution and the people of the United States when I enlisted in 1970, and my dedication to those principles and that mission has continued unwavering for more than four decades.

From a police officer to a police chief, I have built a reputation on reducing crime and the human and economic toll it takes, professionalizing law enforcement from a local, national, and international level, and expanding law enforcement service through community policing. I have a keen sense of the importance of creating a stable and fostering environment so individuals, society, and commerce can thrive and prosper.

I now have 37 years in law enforcement, including serving as Chief/ Commissioner of two major city police departments and I have led the Office of National Drug Control Policy for the President for over four years. I have successfully managed large and complex law enforcement organizations, before and after the attacks of September 11<sup>th</sup>, that function in constantly evolving and highly challenging operational environments. Under my direction, the organizations I led were effectively and strategically managed. In my management style, I believe that the people come first. In every leadership assignment I earned, I sought to inspire the workforce under my direction to produce the best possible outcome while being responsive to the public we served. I have been a demanding leader and expect integrity and commitment to the mission in return. In turn, I have made the same commitment to every organization I have served and led.

As Director of ONDCP, I am responsible for the development, coordination, and implementation of the National Drug Control Strategy (Strategy). The Strategy pursues a balanced public health and safety approach to reducing drug use and its consequences, encompassing prevention, early intervention, treatment, recovery support, criminal justice reform, effective law enforcement, and international cooperation. With respect to my budgetary oversight responsibilities as Director, I certify National Drug Control Agencies' fall budget submissions and approve financial plans, ensuring requests adequately support the Strategy. I prepare an annual

consolidated National Drug Control Budget (in excess of \$25 billion) that is released each year with the President's Budget and the Strategy. I have consistently sought to manage these funds in a manner that produces the best possible outcome for the American public. As Director, I have the responsibility to direct the U.S. position on international drug policy. To best accomplish this task, I have travelled to over 15 countries and met with numerous heads of state and enforcement and border control authorities in order to best coordinate international efforts.

I believe my experience as a police chief, demonstrated leader of large organizations, and my commitment to public service makes me well qualified to lead CBP as Commissioner. If I have the honor of being confirmed, I will once again commit myself to the highest standards of public service and will consider it a privilege to serve in this position, leading the men and women of CBP in the dual missions of protecting our borders and facilitating trade and commerce. I believe these two missions are essential to our country's well-being and also believe that they are mutually reinforcing.

I appreciate and respect the people who work in public service and I know that CBP's greatest resource will always be its people. I believe CBP can function most effectively with both its front-line staff and management working in a cooperative and committed environment and, if confirmed as Commissioner, I will dedicate my efforts to that end.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

**1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**

Yes.

**2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

No.

**3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes.

**C. POTENTIAL CONFLICTS OF INTEREST**

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

Testimony before the U.S. House of Representatives, Ways and Means Committee, Subcommittee on Income Security and Family Support, before the U.S. House of Representatives (27 February 2009). The subject of the hearing was foster care.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

#### **D. LEGAL AND OTHER MATTERS**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

**3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

Yes. In my official capacity as a police chief, I have been named as a defendant in hundreds of civil actions, but none resulted in a finding of wrong-doing on my behalf. In addition, in 2003 and 2004, I was a plaintiff in two civil matters filed in King County District Court (Washington), for an anti-harassment order. The subject of the anti-harassment order challenged the order in federal district court, suing me in my individual and official capacity. *Peace v. Kerlikowske et. al.*, case no. 04-2114 (W.D. Wash.). The Court granted my motion to dismiss, which was upheld on appeal by the Ninth Circuit in 2007, case no. 05-35418. Mr. Peace later violated the restraining order and was criminally charged. He was found guilty by a jury for the first violation, a misdemeanor, and a subsequent violation was charged as a felony. Mr. Peace pleaded guilty and sent me a letter of apology.

**4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.**

No.

**5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**

None to my knowledge.

**E. TESTIFYING BEFORE CONGRESS**

**1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?**

Yes.

**2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?**

Yes.



**FINANCE COMMITTEE QUESTIONS FOR THE RECORD**

**United States Senate  
Committee on Finance**

**Hearing on  
Confirmation of Richard "Gil" Kerlikowske to be Commissioner of Customs at the  
U.S. Department of Homeland Security  
January 15, 2014**

**Questions from Chairman Baucus**

**Question 1:**

**Mr. Kerlikowske: Cross-border trade is vital to Montana's economy. But Montana and other rural areas need more resources to keep this trade flowing. The customs reauthorization bill I introduced with Senator Hatch establishes a pilot program to expand the number of 24-hour commercial ports along under-served portions of our land borders. What are your plans to increase resources on the northern border, especially in under-served areas like Montana?**

**Answer:**

I recognize the impact ports of entry can have on nearby communities. My experience in Seattle, with its large international port made me understand its critical impact on the economy. Forecasts are clear that we will experience continued growth in travel and trade. We must carefully assess where expansion is possible.

I strongly support the intent of the provision, which is to ensure that CBP devotes adequate resources to facilitate lawful trade along the Northern border and encourages economic growth. We must balance this against finite funding, but I believe that the goals of improving trade and commerce in pilot programs serves as an excellent platform. If confirmed, I will explore the means to encourage economic growth, including the means to fund expanded levels of service in underserved areas along the Northern border and elsewhere. I look forward to working with the Montana delegation and others toward that end.

**Question 2:**

**CBP needs to strike the right balance between facilitating trade and securing our borders. These two interests are equally important. But they are not mutually exclusive. How can we ensure that CBP maintains its efforts to focus on trade? What kind of meaningful measures for both trade enforcement and trade facilitation has CBP developed to demonstrate to us the effectiveness of your trade programs?**

**Answer:**

The facilitation of legitimate cross border trade is not only critical to economic prosperity, it is central to CBP's security mission as well. Inspection resources need to be devoted to travelers and cargo that present the highest risk. That is only possible if CBP uses information to identify low risk travelers and cargo and strives to move both expeditiously through ports of entry.

If confirmed I will provide the necessary leadership in maintaining CBP's focus on its trade – related responsibilities. I support the trade transformation initiatives that CBP has undertaken over the past few years and am committed to building on that foundation if confirmed as Commissioner. In researching these issues, I think CBP needs to continue to upgrade and automate customs procedures to align with modern business practices. Partnerships play a central role in CBP's success, and if confirmed, I intend to focus on enhancing partnerships with other government agencies, foreign governments, the private sector, and this Committee.

Concerning metrics, I consider it a fundamental duty of leadership to set goals and measure progress against those goals. I understand that CBP, in consultation with the Committee, has developed metrics. I am not yet in a position to assess whether these and other metrics are sufficient to assess CBP's effectiveness across the full range of CBP's trade-related responsibilities. If confirmed as Commissioner, this will be among my top priorities.

**Question 3:**

**In general the U.S. sets the standard for protection of intellectual property, yet on one issue of importance to copyright holders, the U.S. lags well behind other nations. Many nations release information on devices which circumvent technological means of protection of copyrighted works when these devices are seized by their customs services. CBP has pondered taking this step since 2004 and my CBP Reauthorization bill has a provision to do this, yet has still not done so, despite several requests from Congress.**

**Will you take up this matter expeditiously if you are confirmed so that this information, so important to enforcement efforts of the private sector, can be released?**

**Answer:**

Yes. Following my nomination to serve as CBP Commissioner I heard from companies and associations about the need for CBP to prioritize enforcement of intellectual property rights and increase its collaboration with rights holders. I understand that circumvention devices undermine copyright protections and pose a continuing threat to American innovation, which is essential to our nation's economic prosperity. As a general law enforcement principle, I support appropriate transparency with the public and especially with parties impacted by violations of law.

I have not yet had an opportunity to explore specific policy options in this area, including release of information on seized circumvention devices, but I will make it a priority to do so in collaboration with this Committee if confirmed as Commissioner.

**Question 4:**

The Obama Administration has set a goal of welcoming 100 million international visitors by 2021—an increase of nearly 35 million travelers over last year. I hope a good number of them choose to visit my home state of Montana and enjoy our wonderful fishing, hiking, and skiing.

While the State Department has made improvements to streamline the visa issuance process in high demand markets, CBP also has an important role in reaching this goal. Most notably, improving entry throughput and ensuring travelers are greeted in a welcoming and efficient manner at ports of entry. If confirmed, can you commit to working with Congress on key travel facilitation initiatives that will allow the U.S. to meet the 100 million visitor goal?

**Answer:**

Yes. One of CBP's most important responsibilities is to encourage travel and tourism to the United States, and if confirmed as Commissioner, I will make it a top priority to support that effort. CBP has an important law enforcement role to perform at the border, but it must do so in a manner that minimizes adverse impacts on legitimate travel.

Courteous treatment of the traveling public is not only a matter of law enforcement professionalism; it is a matter of great importance to the U.S. economy. As business leaders in the travel and tourism industry have pointed out to me, travelers have a choice as to their destination and can take their money elsewhere. A CBP officer is the first person a traveler encounters on entry to the United States, and that interaction must be professional.

Increased travel volume has resulted in unacceptably long wait times at our nation's international airports and land ports of entry. CBP needs to continue its focus on transforming its business process, including expansion of trusted traveler programs, reducing paperwork, and automating aspects of its inspection process wherever possible. I have visited Miami International Airport and seen CBP's efforts to automate aspects of the inspection process such as the automated passport control kiosks. CBP must also ensure that ports of entry are appropriately staffed with CBP officers, as well as Agriculture Specialists. If confirmed, I will seek ways to continue to transform business processes to find new efficiencies, while ensuring that the entry process is welcoming to legitimate travelers.

**Questions from Senator Hatch****Question 1:**

Protecting the homeland is essential to our security but trade is also important to our economic security.

If confirmed as the next Commissioner of CBP, how will you ensure that trade functions receive high priority at CBP?

**Answer:**

CBP's trade enforcement and facilitation responsibilities are vital to the economic security of the United States.

The facilitation of legitimate cross border trade is not only critical to economic prosperity, it is central to CBP's security mission as well. Inspection resources need to be devoted to travelers and cargo that present the highest risk. That is only possible if CBP uses information to identify low risk travelers and cargo and strives to move both expeditiously through ports of entry. I will provide the necessary leadership in maintaining CBP's focus on its trade-related responsibilities. I support the trade transformation initiatives that CBP has undertaken over the past few years and am committed to building on that foundation if confirmed as Commissioner. CBP needs to continue to transform and automate customs procedures to align with modern business. Partnerships play a central role in CBP's success, and if confirmed, I intend to focus on expanding partnerships with other government agencies, foreign governments, the private sector, and this Committee.

**Question 2:**

**Strong intellectual property rights are an important part of our ability to export innovative goods and services around the world. When we held a hearing to discuss the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, we heard from the General Counsel at the National Electrical Manufacturers Association, Mr. Clark Silcox, about the importance of IP protection. Mr. Silcox stressed the importance of ensuring that counterfeit and unsafe products that could potentially harm U.S. consumers do not cross our borders. So, while we need strong intellectual property rights enforcement abroad we also need strong enforcement at our borders.**

**Please let us know what you would do if confirmed as the next Commissioner of CBP to ensure that the intellectual property laws are properly enforced at our nation's borders.**

**Answer:**

The U.S. government's protection of intellectual property rights (IPR) is not only essential for protecting our economy, it is critical to our health, safety, and national security. If confirmed as Commissioner, I will focus on developing CBP's partnerships with the private sector to expand trade intelligence concerning IPR violations, provide continuous training of CBP's workforce, collect advance information where possible for authentic goods, and develop authentication tools that can be used in the field.

CBP's creation of Centers of Excellence and Expertise has helped to develop and coordinate industry-specific expertise to identify and interdict IPR-infringing imports. That effort needs to continue and feed a strengthened partnership with ICE-Homeland Security Investigations (HSI) and other law enforcement agencies at the National IPR Center.

Finally, my sense is that CBP—together with the Office of the U.S. Intellectual Property Enforcement Coordinator and its partners in the federal government—needs to explore with this

Committee incentives for voluntary disclosure of IPR-infringing imports and legal tools that can make CBP's enforcement at the border more effective.

**Question 3:**

Several months ago, we held a hearing to consider legislation reauthorizing customs. At the hearing, David Cooper, the Global Customs Compliance Manager at Procter and Gamble, discussed the damaging effects of counterfeit products and particularly the danger posed to consumers by counterfeit drugs. Mr. Cooper described the ways P&G has collaborated with CBP to increase identification of counterfeit products at the border. As the current Drug Czar, you know the importance of preventing unsafe drugs from entering the United States.

**Please let us know what you would do if confirmed as the next Commissioner of CBP to ensure that the unsafe drugs do not enter the United States.**

**Answer:**

As in many other areas, CBP's effectiveness in combatting counterfeit pharmaceuticals depends on close collaboration with the private sector and partnerships with other government agencies. As ONDCP Director, I have focused attention on pharmaceutical drug abuse and, as part of that effort, developed a close working relationship with Dr. Margaret Hamburg, FDA's Commissioner. If confirmed as CBP Commissioner, I will emphasize a similar collaborative approach to leverage the missions, authorities, and capabilities of agencies in the federal government toward this common objective.

CBP's Pharmaceutical, Health and Chemicals Center for Excellence and Expertise is making progress to develop and centralize knowledge and talent in the agency, and it needs to continue on this track. Moving forward, it is clear to me that CBP needs to coordinate this expertise with FDA, ICE, and other agencies to share intelligence, build criminal investigations, and develop effective interdiction strategies. The Border Interagency Executive Council has made a promising start in this direction. If confirmed as Commissioner, I will invigorate the BIEC to focus the relevant capabilities of the entire U.S. government on this problem.

**Question 4:**

**When sea, air and land ports of entry throughout the United States are not properly staffed by CBP personnel, travelers and merchandise are subject to delays in processing. These delays can directly affect our economy as they can affect foreign travel to the United States and increase the cost of imported merchandise.**

**Please let us know what you would do if confirmed as the next Commissioner of CBP to ensure that the ports of entry are adequately staffed with CBP personnel in order to prevent delays in the processing of travelers and merchandise?**

**Answer:**

I have heard repeatedly from agency officials, leaders in the travel and trade communities, as well as members of this Committee that CBP staffing shortfalls are a significant challenge in the air, land, and sea environments. If confirmed as Commissioner, it will be a top priority to ensure that ports of entry are adequately staffed with CBP officers and Agriculture Specialists to meet the agency's important trade and security mission requirements.

CBP has identified a need and a strategy, based on a sophisticated workload staffing model, for 3,811 additional officers. Congress, in the Consolidated Appropriations Act of 2014, funded 2,000, which is an important step forward. I look forward to working with this Committee, others in Congress, and private sector stakeholders to identify sources of funding to address the remaining shortfall.

**Question 5:**

**The President's recent budget proposed an increase in the customs user fees. While CBP should be properly reimbursed for the services that it provides, those who pay such fees need to know that they are not overpaying for them or subsidizing other users of such customs services—which is a concern of some who pay these fees.**

**Please let us know if confirmed as the next Commissioner of CBP what approach you would undertake to ensure that those who pay customs user fees are not overpaying for them or subsidizing other users of such customs services.**

**Answer:**

The Administration's strategy to reduce wait times and speed processing of cargo at ports of entry includes proposed increases for immigration and customs user fees to fund additional CBP officers. These proposals require legislative action and I believe they are pending review by this Committee.

Private sector leaders in the international trade community have expressed to me concern that user fees are not providing value in the environments where they assessed. It is imperative that CBP maintain detailed information on the collection and allocation of user fees, establish baselines of service and associated costs, and develop the means to communicate how increases in fees will translate into services in the air, land, and sea environments.

The Department of Homeland Security recently created a User Fee Advisory Committee consisting of representatives from the private sector to advise and address the performance of airport and seaport inspections coinciding with the assessment of an agriculture, customs, or immigration user fee. If confirmed, I look forward to working with this new advisory committee as well as Congress to ensure user fee transparency.

**Question 6:**

**Outreach to the trade community is important for both CBP and the trade community. CBP needs to know the views of the trade community with respect to how it might improve**

its trade operations and functions. I know that CBP has undertaken several outreach efforts to the trade community.

**What are your views on CBP's current performance on outreach efforts to the trade community, and do you have any suggestions or proposals for future outreach efforts to the trade community?**

**Answer:**

From my conversations with the COAC, trade associations, and members of the business community, I understand CBP has made great strides over the past few years in its trade outreach efforts. If confirmed, I intend to increase CBP's communication and collaboration with stakeholders through symposiums, teleconferences, webinars, and "trade days" with CBP leadership. In addition, I would pursue regional roundtables with members of the trade community and other stakeholders. I will take a personal interest in making sure that I have available time to listen to and meet with the trade community.

**Question 7:**

**CBP preclearance operations of the type found in Canada, Ireland, and the Caribbean have been useful in facilitating legitimate travel into the United States.**

**What are your views on the effectiveness of these preclearance operations?**

**Answer:**

Preclearance appears to have been a successful model for enhancing security and facilitating cross border trade and travel. In the past, the primary constraint to expansion has been the cost. If confirmed as Commissioner, I would work with this Committee to consider requests for preclearance locations, taking into account the costs and benefits—both to the government and private sector—associated with establishing new locations.

**Question 8:**

**CBP has undertaken a series of initiatives to facilitate trade including the Automated Commercial Environment (ACE) and the Centers of Excellence and Expertise. At our hearing considering the Customs reauthorization legislation drafted in this committee, Ms. Mary Ann Comstock, a customs broker at UPS, testified to the importance of continuing to modernize customs procedures at the border. Ms. Comstock highlighted the necessity for programs such as the International Trade Data System (ITDS) which creates a single window for processing goods inbound to the U.S. to be fully implemented.**

**If you are confirmed as the next commissioner, what will you do to support and complete these trade initiatives?**

**Answer:**

I have heard from government officials and private sector leaders in the trade community following my nomination that completion of ACE and ITDS is central to CBP's efforts to

modernize its trade processes, create government-wide efficiencies, and minimize transaction costs associated with international trade. The ACE program has been beset by problems for many years, and until recently, showed little progress. From preliminary briefings I have received, it appears that CBP has made progress with recent ACE deployments using its new agile development methodology. If confirmed, I will stay personally engaged to ensure that ACE remains a priority and I will closely monitor its progress. I will ensure that the stakeholders in ACE are kept aware of its status.

**Question 9:**

**We have heard that the morale of employees at the Department of Homeland Security is very low.**

**What will you do to improve the morale at CBP if confirmed as the next commissioner of CBP?**

**Answer:**

Government-wide surveys have highlighted a morale problem throughout the Department of Homeland Security, including CBP. This is a longstanding problem, and one that requires sustained attention from the Commissioner to first-line supervisors. As a major city police chief, I quickly came to understand that managers and supervisors must work continually to ensure that employees recognize that their roles—whether they involve making arrests, hiring employees, providing IT support, or washing vehicles—are essential to the organization's success. One of a leader's fundamental responsibilities is to communicate that every member of the team is important. Another fundamental responsibility of a leader is to listen. If confirmed, I intend to visit CBP facilities around the country, meet the workforce, and get a personal understanding of employee concerns and suggestions for improvement. I will also engage with the organizations that represent CBP's personnel.

**Question 10:**

**As you look to enhance CBP's US VISIT program, as well as other identity management programs, what role do you see biometrics playing?**

**How do you envision integrating fingerprints, iris scans, facial recognition, and other technologies to make CBP's efforts more effective?**

**Answer:**

Throughout my career, I have seen firsthand how technology can improve the effectiveness of law enforcement operations. Biometric technologies have played and will continue to play an increasing role in establishing and verifying the identity of individuals moving through CBP processes. Proposed technology solutions must operate in the real world, so it is important that the end-user be involved in technology acquisitions and that they add practical value in the operational environment. If confirmed, I will ensure that CBP works with the DHS Science and Technology Directorate to develop cost-effective identity management technologies for CBP.



operations that do not hinder travel and trade. I will also engage with the biometric research community both within the government and the academia.

**Question 11:**

**The Abu Dhabi preclearance facility has caused some concerns in the U.S. travel industry with respect to giving foreign airline carriers a competitive advantage over U.S. carriers. Are there other ways that CBP/DHS can address security risks or concerns other than through establishing preclearance facilities such as the one in Abu Dhabi that would not unfairly impact U.S. carriers?**

I have been briefed by CBP that establishing preclearance in UAE will significantly enhance security. If confirmed, I will take an independent look at the security benefits and evaluate them against any adverse economic impact to U.S. commercial interests. In any future preclearance agreement, I would ensure that CBP consults with all affected private industry stakeholders, including air carriers, so that preclearance facilities do not place them at a competitive disadvantage. Consideration of preclearance projects should be done in consultation with Congress

**Questions from Senator Cantwell**

**Question 1:**

**Profiling: There have been concerns expressed by human rights and immigrant rights advocates in Washington about racial profiling by Border Patrol agents in Washington State. In fact a lawsuit filed against the Border Patrol was settled in September of 2013. That settlement involved the retraining of agents, the sharing of information and reaffirmation of the Border Patrol's commitment to protection of individual's fourth amendment rights against unreasonable searches.**

**While Customs and Border Patrol is responsible for securing our borders, I believe it also has a responsibility to ensure that people of all colors and faiths don't feel threatened by the presence of Customs and Border Patrol agents in their Communities. Can you commit to continue efforts to allegations of unconstitutional racial profiling by the Border Patrol?**

**Answer:**

If confirmed as Commissioner, I commit to addressing any allegations of unconstitutional racial profiling by any CBP employee. ECBP employees have a critical law enforcement function to perform, and to assure our safety they need to perform it well. I would want to ensure that any allegations of mistreatment and misconduct are promptly investigated and appropriate disciplinary if warranted is taken. As part of that process it is also important the CBP has a robust program in place to train and supervise its workforce.

**Question 2:**

**Transparency:** Civil rights and civil liberties organizations along with local communities have expressed concerns about a lack of transparency and accountability at the Customs and Border Patrol. These concerns include:

- The inability to track allegations of wrongdoing by officers;
- the non-binding nature of recommendations made by the Office of Civil Rights and Civil Liberties;
- and the lack of community engagement related to infrastructure projects that may have unintended impacts on the community. We have experienced this particular issue in Washington with the recent announcement of a move by the Customs Service to a larger more prominent space in Friday Harbor in the San Juan Islands. We have also seen it in the past, when Customs and Border Patrol move to a much larger building in Port Angeles.

**Can you commit that you will encourage Customs and Border Patrol sector Chiefs to operate in an open and cooperative manner with our border communities in Washington state and across the country?**

**Answer:**

Yes. Throughout my career, I have recognized that law enforcement organizations operate most effectively when they are as transparent as possible and enjoy the support and trust of the public. If I am confirmed as Commissioner, I commit to encouraging an open and continuous dialogue between CBP headquarters, its field leadership and the local communities in which they serve. My experience in Seattle with installing video cameras in all patrol cars and development and implementation of a personnel "early warning" system is clear evidence of my commitment to oversight and transparency.

**Question 3:**

**Translation Services:** There has been concern expressed in the Pacific Northwest about the utilization of Border Patrol agents for translation services by local law enforcement and even other federal agencies such as the Forest Service. In one instance in 2011, while Border Patrol was providing translation services to the Forest Service on the Olympic Peninsula, an undocumented person fled and jumped into the Sol Duc River where he drowned. The Forest Service and Customs and Border Patrol have now changed their policies on translation services provided by Customs and Border Patrol.

There remains some concern among civil rights and civil liberties advocates about the implementation of the Customs and Border Protection's rules against providing these services, specifically exceptions to the written policy. Will you support the revised policy on translation services and work to ensure that the policy is followed in a clear transparent manner?

**Answer:**

It is my understanding that if a Federal, state, or local law enforcement organization outside of the Department of Homeland Security requests U.S. Customs and Border Protection's assistance based solely on a need for language translation, those requests are referred to a list of available local and national translation services. If confirmed, I will review the translation services policy and current practices to ensure that you and your constituents have trust and confidence in CBP's operations. I recognize that vulnerable individuals like victims of domestic violence or human trafficking may need translation services on an emergency basis and this should also be taken into account.

**Question 4:**

**Pre-clearance:** As you know, the Beyond the Border Action Plan was announced by the United States and Canada on December 7, 2011. I was pleased that the document included a commitment to begin negotiations on a pre-clearance agreement for passenger rail and cruise ship travelers destined for the United States from Vancouver, British Columbia. I understand those negotiations—along with those related to updating pre-clearance procedures at Canadian airports—are still underway.

I am particularly excited about the benefits of pre-clearance for southbound travelers on existing and planned Amtrak *Cascades* service. In addition to saving travel time and improving traveler experience, combining pre-clearance and pre-inspection services in Vancouver can result in increased government efficiency, safer and more secure operations, and smoother processing.

These improvements will build on substantial federal, state, and local investments made in Washington and Oregon's intercity passenger rail system over the past decade. Ridership on Amtrak *Cascades* is up more than 152 percent over the past 15 years and the service is estimated to contribute more than \$130 million to the regional economy.

- Will you strongly support efforts to finish negotiations and implement a passenger rail pre-clearance agreement with Canada that will both preserve security and speed travel between our two countries, particularly in the Pacific Northwest?

**Answer:**

If confirmed as Commissioner of CBP, I commit to working closely with Department leadership and our Canadian partners to implement the Beyond the Border Action Plan, which was supported by President Obama and Prime Minister Harper, including the development of a new preclearance agreement and/or amendment of the air preclearance agreement. Preclearance has been a successful model for enhancing security and facilitating legitimate cross border trade and travel. I would support efforts to also work with private industry stakeholders. I would work with this Committee to consider requests for preclearance locations, taking into account the costs and benefits associated with establishing a new location.

**Questions from Senator Portman**

**Question 1:**

Companies involved in section 337 litigation have indicated that as the mission of CBP has changed, the process for enforcing exclusion orders also has changed, and that there is now some confusion about who at CBP is involved in the enforcement of exclusion orders, the responsibilities of the offices involved, and the qualifications of the individuals. To help us better understand the resources devoted to section 337 enforcement, please provide a breakdown of the process—including (a) the number of employees involved at the various stages of review, and (b) the qualifications of the staff attorneys who review the administrative record and of the field personnel, including targeters and import specialists.

**Answer:**

CBP has an important role in enforcing exclusion orders, which mainly involve patent violations, issued by the International Trade Commission. As a nominee, I have not yet had an opportunity to examine the roles, responsibilities, and resources of the relevant CBP offices. If confirmed, I commit to do so.

**Question 2:**

I understand that the only regulation addressing exclusion orders, 19 C.F.R. 12.39, provides no guidance on what procedures should be followed for determining whether a product is covered by an exclusion order, and that the last Customs directive is 13 years old, adds only minimal clarity, and does not have the effect of a regulation. The end result is unpredictability and confusion. Is the CBP considering updating its regulations and procedures?

**Answer:**

I understand that there is an inter-agency review of the ITC exclusion order process. I also understand that CBP is considering changes in its administrative rulings process that would potentially allow more meaningful input by all parties. If confirmed I will ensure that CBP continues its work with its partners in government, the private sector, and on this Committee to improve the exclusion order process.

**Question 3:**

Some stakeholders have complained that the process at Customs for enforcing ITC exclusion orders is broken and requires urgent attention. In particular, parties seeking to enforce exclusion orders, as well as parties subject to them, claim that CBP's enforcement process lacks transparency. In June, the White House Intellectual Property Enforcement Coordinator initiated an interagency review of existing CBP and ITC procedures to ensure that activities related to the enforcement of exclusion orders are conducted in a manner that is transparent, effective, and efficient. What is the status of these interagency efforts? What will you commit to do to ensure that CBP promotes transparency in its enforcement activities?

**Answer:**

I understand that there is a broad executive branch review of the exclusion order process and that CBP is considering changes in its administrative rulings process that would allow more meaningful input by all parties. As a nominee, I have not yet been briefed on the status of these efforts. If confirmed, I will ensure that CBP continues its work with its partners in government, the private sector, and on this Committee to promote transparency in its exclusion order enforcement activities.

**Question 4:**

The ex parte nature of CBP's current process for adjudicating exclusion order rulings has been of particular concern among both stakeholders and commentators, who complain that the process lacks an opportunity for complainants and importers to respond. For example, CBP issues decisions on whether proposed design-arounds address the infringement that gave rise to the exclusion order without giving the party that obtained the order an opportunity to respond. I understand Customs is working toward transitioning to an inter partes procedure for adjudicating exclusion order rulings. What is the status of this transition and when do you expect to implement an inter partes process? What other steps will you take to ensure that the agency hears from both parties to each dispute and is able to address these practical concerns about the lack of transparency and fair process?

**Answer:**

I also understand that CBP is working with the ITC toward transitioning to an *inter partes* process. As stated above, I have not yet had an opportunity to be briefed on the status of this transition or other reforms to the exclusion order process.

**Questions from Senator Roberts****Question 1:**

**Does Customs and Border Protection (CBP) have independent authority to make stops and searches of general aviation (GA) aircraft not operating near a US border?**

**Answer:**

As a nominee, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft. However, if confirmed I will work quickly to gain a full understanding of this issue.

**Question 2:**

**What are the reasons that CBP's Office of Air and Marine would be tracking domestic GA aircraft, particularly GA activity well within 100 miles of any US border?**

**Answer:**

As noted, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft. If confirmed, I will review CBP operations in this area

**Question 3:**

**Do you believe CBP, or any agency within DHS for that matter, should be conducting stops and searches on GA aircraft without reasonable suspicion of illegal activities or probable cause to conduct a search?**

**Answer:**

I believe CBP must follow the law with regard to all search and seizure activity. As a nominee, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft.

**Question 4:**

**If confirmed as Commissioner of U.S. Customs and Border Protection, can I get a commitment from you that I will receive a written response—with records of the stops and searches of GA aircraft that I have requested—and that you will continue to work with me on this issue to end unlawful stops and searches of GA aircraft traveling solely within domestic borders?**

**Answer:**

If confirmed, I will ensure that CBP provides a response to your inquiry. I will also evaluate CBP's enforcement activity in relation to general aviation aircraft. If I find that any such enforcement activities exceed the agency's authority, violate the U.S. Constitution, or are in any other way contrary to law, I will take immediate corrective action.

**Question from Senator Burr**

**Question 1:**

**The anti-dumping and countervailing duties collected by Customs and Border Protection are important to level the playing field for American producers who would otherwise be faced the adverse impact of unfair trade practices. Reports published by Customs and Border Protection indicate that for Fiscal Year 2013, there were over \$45 million in uncollected duties for CDSOA eligible cases alone. I realize there are a number of challenges to collecting these duties, and I appreciate the work that CBP has done to address the outstanding duties owed. For our trade remedies to be meaningful, it is essential that they be enforced. Can you assure me that if confirmed, you will make the collection of outstanding duties a priority?**

**Thank you for the update you provided me on cross-border discussions about abuse deterrent formulations of tamper resistant medicines. I appreciate your attention to this issue as Director of the Office of National Drug Control Policy. As Commissioner of U.S. Customs and Border Protection, what steps will you take to prevent illicit cross-border trade in prescription medicines?**

**Answer:**

I understand that there are challenges to collecting antidumping and countervailing duties, but I am committed to effective collection of these duties to help level the playing field in international trade for U.S. companies. If confirmed, I assure you that I will make the collection of outstanding antidumping and countervailing duties a priority.

Concerning illicit trade in prescription medicines, I will—if confirmed as Commissioner—emphasize a collaborative approach to leverage the missions, authorities, and capabilities of agencies in the Federal government toward this common objective.

I understand that CBP Pharmaceutical, Health and Chemicals Center for Excellence and Expertise is making progress to develop and centralize knowledge and talent in the agency, and I think that it needs to continue on this track. Moving forward, CBP needs to coordinate this expertise with FDA, ICE, and other agencies to share intelligence, build criminal investigations, and develop effective interdiction strategies. The Border Interagency Executive Council has made a promising start in this direction. If confirmed as Commissioner, I will invigorate the BIEC to focus the relevant capabilities of the entire U.S. government on this problem.

**Question from Senator Isakson**

**Question 1:**

**As you know the omnibus appropriations bill currently being considered by the House and Senate recognizes that wait times at customs checkpoints at U.S. international airports, including Hartsfield-Jackson International Airport in Atlanta, have reached record highs. As a result, the omnibus gives significant resources to hire additional new Customs and Border Protection (CBP) officers to alleviate these wait times. In addition, the omnibus prohibits the Department of Homeland Security (DHS) from funding CBP air pre-clearance agreements entering into force after February 1, 2014 unless it satisfies three conditions.**

**Do you believe that CBP should resolve lengthy wait times at U.S. international airports before opening new pre-clearance facilities overseas? Please elaborate on what you think acceptable wait times at CBP facilities like Atlanta should be.**

**Answer:**

Increased travel volume has resulted in unacceptably long wait times at our nation's international airports, including Hartsfield-Jackson Atlanta International Airport. CBP has identified a need

and a strategy, based on a sophisticated workload staffing model, for 3,811 additional officers. Congress, in the Consolidated Appropriations Act of 2014, funded 2,000, which is an important step forward. I look forward to working with this Committee, others in Congress, and private sector stakeholders to identify sources of funding to address the remaining shortfall.

In addition to additional staff, CBP needs to continue its focus on transforming its business process, including expansion of trusted traveler programs, reducing paperwork, and automating aspects of its inspection process wherever possible. CBP must also ensure that ports of entry are appropriately staffed with CBP officers, as well as Agriculture Specialists. If confirmed, I will seek ways to continue to transform business processes to find new efficiencies, while ensuring that the entry process is welcoming to visitors and U.S. citizens.

Concerning establishment of preclearance facilities, if confirmed as Commissioner, I would not support any new facility overseas if such a facility would exacerbate the problem of wait times at U.S. international airports.

#### **Question from Senator Brown**

##### **Question 1:**

**As CBP commissioner, can you commit to taking into account security conditions when evaluating the manner in which we deport migrants, so as to mitigate any unnecessary risks that they might face?**

##### **Answer:**

Yes. If confirmed as Commissioner, I will review current policies to ensure that CBP officers and agents are aware of their responsibilities in the removal process, carry out their law enforcement responsibilities with professionalism, and make sure we are doing the utmost to respect the health and safety of individuals in CBP custody.

#### **Questions from Senator Thune**

##### **Question 1:**

**Senator Wyden and I have been working with CBP for more than two years to ensure that antidumping duties are collected under four antidumping orders on imports of honey, garlic, crawfish, and canned mushrooms from China. It is very concerning that, as best we can determine, close to \$1 billion in duties owed under these four orders since 2000 have not been collected by CBP. Many of the duties owed are secured by bonds held by CBP—approximately \$628 million by CBP's accounting last August. Some of the importers involved in these orders have disappeared, but the sureties that issued the bonds are**



established American companies. Yet the bonds they issued have not been collected by CBP on imports that came in years ago.

Before you are confirmed, I would appreciate your commitment to a full strategy for identifying and collecting on the hundreds of millions of dollars in bonds that have been uncollected for years—some of which have been lost because action was not taken before the statute of limitations had passed. Key parts of that strategy would include:

- Identifying an assistant commissioner to be responsible for resolving this issue, including to responding to Congressional and domestic industry inquiries;
- Providing a full accounting of the \$628 million in bonds that CBP stated it held in connection with the Four Orders in an August letter to Members of Congress ;
- Developing and providing Congress with a comprehensive collection strategy with emphasis upon those bonds that may be nearing the end of the statute of limitations;
- Setting up a process for quarterly consultation with interested Members of Congress and the domestic industry with updates on progress made on collections; and
- Requesting that the DHS Inspector General complete a public report on duty collections related to the Four Orders identifying both causes of delays and recommendations for reform.

Will you provide this commitment to me and the other members of the committee before your confirmation vote?

Answer:

If confirmed, I commit to developing a full strategy for identifying and collecting these bonds and I look forward to working with the Committee on this matter.

**Question 2:**

A letter I recently received from Acting Commissioner Winkowski states that there are currently over 280 active lawsuits with sureties who hold bonds that secure imports of crawfish tail meat, canned mushrooms, garlic and honey. While CBP has stated that it is actively pursuing collection of unpaid duties, it is unclear how CBP is prioritizing these actions. The statute of limitations is of real and serious concern for CBP's litigation strategy and ability to preserve the right to collect duties owed. We know that at least three bonds—worth \$3 million—are uncollectible because the statute of limitations has run.

In United States v. Great American Ins., CBP's first collection lawsuit seeking payment on single transaction bonds, the Court of International Trade ruled that three of the nine bonds were time-barred.

How certain are you that CBP has not missed, or is about to miss, other statute of limitations deadlines? And specifically, what steps are being taken to ensure that CBP is

**aware of entries that may be deemed liquidated by operation of law, which would alter the statute of limitation timeframe?**

**Answer:**

As a nominee, I have not yet been briefed on the extent to which CBP may be time barred from seeking payment on single transaction bonds. If confirmed, I commit to prioritize the development and sharing of a comprehensive strategy that will scrutinize and tackle the concerns raised by this Committee.

**Question 3:**

**Global Entry is a program designed to maximize CBP's limited resources in a tight budgetary environment. While the program has continued to grow with additional enrollment of U.S. citizens, expanding the reciprocal agreements with foreign governments would significantly increase CBP staffing efficiency. Such reciprocal programs are already in place with Mexico, Canada, the Netherlands and Korea.**

**If confirmed, would you continue to grow this program and seek, for example, reciprocal Global Entry agreements with foreign partners like Japan and France—some of our largest foreign visitor markets? Are there other initiatives you would consider to free up CBP resources that would increase security and allow CBP to focus on actual threats?**

**Answer:**

If confirmed as Commissioner, I will work to expand reciprocal agreements with foreign governments and increase enrollment in CBP's trusted traveler programs, including Global Entry. I believe these programs identify the lowest risk travelers and potentially free up inspection resources for higher risk travelers. This both increases security and reduces wait times for all travelers. That is the type of program we should strongly support and foster.

I have been briefed that as part of its business transformation initiatives, CBP has taken other steps to eliminate paperwork, such as the I-94 and I-94W forms, and to automate aspects of the inspection process with Automated Passport Control Kiosks. If confirmed, I will seek ways to continue to transform business processes to find new efficiencies.

**Question 4:**

**The entry/exit tracking of international visitors has continued to be debated as part of immigration reform efforts in the House and Senate. DHS has implemented an enhanced biographic exit system to improve entry/exit matching and more accurately identify overstays. Due to the importance of this issue in the broader immigration discussions, Congress has requested an update on the success of the enhanced biographic exit program, along with country-by-country overstay numbers.**

**If confirmed, will you commit to working with other DHS leadership to provide Congress with the information within 90 days?**

**Answer:**

Yes. You have my commitment to work with DHS leadership on this issue.

**Question 5:**

**The FY 2014 omnibus appropriations package that we are considering this week authorizes an increase of 2,000 CBP officers, and allows DHS and CBP to determine how the new officers are utilized. As you may know from your own experience on international flights to the U.S., customs wait times at our major international airports are unacceptably long, averaging one hour and exceeding three hours during peak travel times. This long-standing problem hurts international tourism, costing our economy billions of dollars annually. As CBP commissioner, how would you allocate these additional officers?**

**Answer:**

If confirmed as Commissioner of CBP, I would ensure that these officers are allocated to ports of entry where they are needed the most, to assist in addressing wait times, and facilitating the flow of legitimate trade and travel. Engagement with the travel community and Congress provides important insight into where officers are needed most. In addition, I believe CBP has developed a sophisticated Workload Staffing Model to help identify shortfalls and the most efficient allocation of CBP officers. If confirmed, I plan to use all sources of information to maximize the use of CBP resources and reduce wait times at international airports.

**Question 6:**

**CBP engendered some controversy last year regarding its enforcement of ITC exclusion orders relating to intellectual property infringement. These orders arise from complex patent disputes—often involving high tech products—and CBP must carefully balance protecting the rights holder while ensuring that consumers continue to have access to non-infringing alternatives. It is my understanding that CBP settled upon a policy that it will not bar products on the basis of features that were present on the devices at the time of the ITC investigation, but not specifically accused by the patent holder and therefore not found to infringe by the ITC. If confirmed, would you continue this policy?**

**Answer:**

In my discussions with representatives of the trade community and agency officials, it has become clear that the existing ITC exclusion order process needs to evolve with the rapid pace of technological innovation. I understand that there is a broad executive branch review of the process. I also understand that CBP is considering changes in its administrative rulings process that would allow more meaningful input by all parties. As a nominee, I have not yet had an opportunity to be briefed on CBP's enforcement policy as to features present at the time of an ITC investigation but not covered by an exclusion order. If confirmed I will examine the matter and provide additional information to your office. I will also ensure that CBP continues its work with its partners in government, the private sector, and on this Committee to improve the exclusion order process.

**Questions from Senator Cornyn**

**Question 1: Border Security & National Security**

In 2011, Lieutenant General Ronald Burgess, then-Director of the Defense Intelligence Agency, testified before the Senate Armed Services Committee that controlling the Southern Border is a national security concern because “if you can move drugs and people, you can move other things that are of concern to us as a nation.” Last November, the House Homeland Security Subcommittee on Investigations released a report finding an increasing link between Middle East terrorist networks, like Hezbollah, and Mexican drug cartels.

1. Given the drug cartel war occurring just miles across our Southern Border, the terrorist tactics used by these cartels, and the massive amount of narcotics these organizations are able to move across the border every year, doesn't it endanger our national security to suggest that the Southern Border is now secure?
2. Don't these national security threats demonstrate that anything less than 100% operational control of the Southern Border is unacceptable?

**Answer:**

I agree that gaps in border security can present national security concerns, as transnational criminal and terrorist organizations can exploit the same vulnerabilities along our vast borders. If confirmed as Commissioner, I intend to support implementation of the U.S. Border Patrol's Strategic Plan, which emphasizes effective use of information, integration, and rapid response to address cross-border threats. From my briefings with Border Patrol officials, I understand that the Border Patrol's past methodology to determine miles of operational control was designed to allocate available resources and not as a comprehensive measure of border security. I agree, however, that CBP—together with the government of Mexico and its partners in federal, state, local, tribal—needs to protect the border against all threats. If confirmed, I look forward to working with you and others in Congress on this important aspect of CBP's mission and the development of appropriate measures of border security.

**Question 2: Southbound Inspections**

CBP's security missions must respond to attempts to move illicit goods and contraband into the U.S., but also to the flow of southbound weapons and bulk cash. CBP currently lacks adequate infrastructure and staffing to inspect all southbound traffic.

1. If confirmed, what priority will CBP place on expanding southbound inspections under your leadership?
2. How will you seek to increase their effectiveness, either through improved officer training, technology, or a strategic combination?

**Answer:**

As ONDCP Director, I recognize the importance of interdicting southbound weapons and cash to disrupt the transnational criminal organizations that smuggle human beings, narcotics, and other

contraband into the United States. I believe CBP has made an impact with its limited southbound inspection operations in seizing currency, illicit narcotics, and weapons, but I support targeted enforcement strategies to implement expanded southbound operations, focused on targeting criminal networks, to the greatest degree that resources allow. If confirmed, I will work with you and others in Congress to identify the means to expand CBP's capacity to target illicit networks, increase human resources, infrastructure, and technology to maximize the effectiveness of southbound operations.

**Question 3: Biometric Entry-Exit**

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which required the deployment of a biometric entry-exit system at all United States ports of entry. More than 17 years has past, and this provision has not been fully implemented by DHS. During Senate debate over S. 744, I offered an amendment (SA #1251) that would have required the deployment of a biometric entry-exit system at airports and seaports in the United States prior to the authorization of many of the bill's immigration reform provisions.

1. Do you agree that the more than 17 year delay in implementing the biometric entry-exit system is unacceptable?
2. If confirmed, what measures will you take to ensure that the biometric entry-exit requirements of IIRAIRA are implemented?
3. What would you say to critics of a biometric entry-exit system who believe that compliance with IIRAIRA is impossible or cost-prohibitive?

**Answer:**

I recognize that the biometric entry-exit system mandate is the law of the land. In briefings that I received since my nomination, I understand that U.S. ports of entry were not designed to manage exit in the same manner that they manage entry, and redesigning ports-of-entry to accommodate biometric exit infrastructure could be costly to both industry and the government. If confirmed, I will direct that CBP works with DHS's Science and Technology Directorate on innovative, cost effective means to implement a biometric exit system.

**Question 4: Human Trafficking**

Human trafficking and abusive human smuggling are growing human rights threats on our Southern border, and I am committed to fighting them as a member of the Senate. Recently in Texas, we have seen increases in the number of unaccompanied minors and migrant deaths on the border.

1. If confirmed, what specific measures will you take to increase the Customs Service's role in fighting human trafficking, child sex trafficking, and abusive human smuggling?
2. Do you believe that Central American drug cartels and other transnational criminal organizations are responsible for much of the increase in these crimes?

**Answer:**

Human trafficking and abusive smuggling are significant threats, and I look forward to working with you to address them if confirmed. Transnational criminal organizations, including those based in Central America, are diversified businesses profiting from an array of illegal activity including drug trafficking, human trafficking, kidnapping, and other offenses. I have not yet been briefed on trafficking statistics and trends, but I will provide you specific information at the earliest opportunity.

If confirmed as Commissioner, I will support interagency initiatives to combat human trafficking, such as DHS's Blue Campaign. This is a program involving CBP and the Department of Transportation that provides training to volunteer airline personnel to identify potential victims and report human trafficking events to law enforcement. If confirmed, I would look for additional opportunities to expand training and information sharing with CBP's partners inside and outside government. My experience as a police chief in a major city provided ample evidence of my commitment to investigating and enforcing laws regarding child pornography and human trafficking. The Seattle Police Department was recognized internationally for its efforts in this area.

**Question 5: OTMs**

**We have long known that Mexico is serving as a transit corridor for aliens who are not Mexican, so-called "OTMs." According to Customs and Border Protection (CBP) estimates, over 94,000 aliens were apprehended from countries other than Mexico in FY2012; over half (49,939) were apprehended in the Rio Grande Valley (RGV) Sector. South Texas is now viewed as the favored region for OTMs and transnational criminal networks seeking illegal entry to the U.S.**

- 1. If confirmed, how will CBP better respond to the growing threat of OTMs, particularly in South Texas?**
- 2. What role do you believe Mexico customs and border enforcement can play in preventing OTMs from reaching U.S. soil?**

**Answer:**

I understand that there has been an increase in apprehensions of nationals from countries Other than Mexico (OTM) in South Texas, predominantly from El Salvador, Guatemala, and Honduras. Because of the significant investments that Congress has made in CBP, including the acquisition of Mobile Surveillance Systems and Motor Vehicle Surveillance Systems, the agency is better able to adjust to changing border crossing trends and address changing border security challenges. It is my understanding that CBP initiated the South Texas Campaign in order to identify the threats posed by Transnational Criminal Organizations. By targeting the organizations using integrated intelligence, engaging Mexico, the interagency and our communities, CBP can better address all illicit cross border activity. Being responsive to changing threats, targeted and focused enforcement will lead to better conditions in the U.S. and Mexico. It is also important that CBP provide training to countries regarding border security and investigation of organized crime.

**Question 6: Border Metrics**

Last year, I introduced the Border Security Results Act of 2013 (S. 683), which would require the Department of Homeland Security to develop a set of objective metrics for gaining operational control of the border at ports of entry, as well as a strategy to reduce port of entry wait times by 50%.

1. Do you support the use of comprehensive and objective metrics to measure border security results?
2. If confirmed, will you begin working to immediately develop and implement these metrics and strategy?

**Answer:**

It is my understanding that CBP currently uses a number of metrics to measure efforts to secure the border. If confirmed, I will review these metrics as well as current strategies to effectively deploy CBP's considerable resources in the most effective manner. Given my experience in dealing with metrics concerning crime and safe cities, I would continue to explore additional metrics to insure we have the clearest picture possible.

**Question 7: Criminal DNA Fingerprinting**

In January of 2006, President Bush signed the Kyl-Cornyn DNA Fingerprint Act into law. This legislation authorizes DHS to collect DNA samples from all arrestees and detainees so that they can be checked against the FBI's DNA database (CODIS) to see if the detainee had previously committed crimes in the United States. More than seven years later, DHS has largely failed to implement this legislation—possibly allowing thousands of violent criminals roam free and denying justice to the victims of these crimes

1. If confirmed, will you work to fully implement the DNA Fingerprint Act at United States ports of entry?

**Answer:**

As a nominee, I have not yet had an opportunity to be briefed on DHS's compliance with the Kyl-Cornyn DNA Fingerprint Act. If confirmed, I will examine this issue carefully. As a career law enforcement officer I understand and recognize the value of DNA evidence.

**Question 8: Trade & Travel Credentials**

Your experience has been primarily in the field of law enforcement—however, CBP plays an important and complex role in not only strengthening homeland security and preventing terrorism, but also facilitating legitimate trade and travel. The Bureau of Transportation Statistics recently noted that for the first time since the passage of the North American Free Trade Agreement (NAFTA), trade with Canada and Mexico totaled over \$100 billion in a single month (October 2013) last year.

1. If confirmed, how will you improve CBP's operations to better meet trade facilitation goals?
2. The increased interdiction of contraband and the reduction of wait times are goals that we both share. But these two goals are often in direct tension. How, specifically, will you work to achieve these two goals in tandem? What types of technology could be deployed by DHS to help achieve these goals?
3. In light of federal budget constraints, communities and businesses in my state of Texas have demonstrated a willingness to contribute additional resources to CBP to improve processing efficiency and reduce congestion. What role do you think local governments and the private sector should play in supporting CBP's trade facilitation mission?
4. The FY2014 Omnibus Appropriations (H.R. 3547) envisions 2,000 new CBP officers for frontline operations. What would you recommend as the appropriate allocation of these additional personnel, by port environment (land, air, sea) and operation type (passenger and cargo)? How would CBP under your leadership ensure that resource allocation decisions like this are made in an efficient and transparent manner?

**Answer:**

CBP's trade enforcement and facilitation responsibilities are vital to the economic security of the United States.

The facilitation of legitimate cross border is not only critical to economic prosperity, it is critical to CBP's security mission as well. Inspection resources need to be devoted to travelers and cargo that present the highest risk. That is only possible if CBP uses information to identify low risk travelers and cargo and strives to move both expeditiously through ports of entry. I believe an increased understanding of the connection between facilitation and trade will help maintain a focus on trade.

If confirmed, I will provide the necessary leadership in maintaining CBP's focus on its trade – related responsibilities. I support the trade transformation initiatives that CBP has undertaken over the past few years and am committed to building on that foundation if confirmed as Commissioner. CBP needs to continue to upgrade and automate customs procedures to align with modern business practices. Based on my prior experience, I believe that partnerships play a central role in CBP's success, and if confirmed, I intend to focus on enhancing partnership with other government agencies, foreign governments, the private sector, and this Committee.

Following my nomination I have heard from agency officials, leaders in the travel and trade communities, and members of this Committee that CBP staffing shortfalls are a significant challenge in the air, land, and sea environments. If confirmed as Commissioner, it will be a top priority to ensure that ports of entry are adequately staffed with CBP officers and Agriculture Specialists to meet the agency's important trade and security mission requirements.

I have been briefed that CBP has identified a need and a strategy, based on a sophisticated workload staffing model, for 3,811 additional officers and that Congress, in the Consolidated Appropriations Act of 2014, funded 2,000, which is an important step forward. I look forward to



working with this Committee, others in Congress, and private sector stakeholders to identify sources of funding to address the remaining shortfall.

As for the allocation of CBP officers, I would, if confirmed as Commissioner, ensure that these officers are allocated to ports of entry where they are needed the most, to assist in addressing wait times, and facilitating the flow of legitimate trade and travel. Engagement with the travel community and Congress provides important insight into where officers are needed most. My understanding is that CBP's Workload Staffing Model helps identify shortfalls and the most efficient allocation of CBP officers. If confirmed, I plan to use all sources of information to maximize the use of CBP resources and reduce wait times at air and land ports of entry. As part of this effort, I intend to emphasize transparency and communication with the trade and travel communities as well as the Congress.

**Question 9: GAO Report**

Last July, the Government Accountability Office released a report on the collection of commercial vehicle wait times at ports of entry along the southwestern border. The report outlines serious flaws in the process CBP uses to collect and report vehicle wait times to the general public. The report indicates that the data is unreliable and generally not utilized by the private sector.

1. If confirmed, how do you intend to improve the wait time collection process? Do you think CBP should consider total vehicular crossing time, rather than just the time it takes to reach primary inspection? What is the ideal amount of time that a commercial or passenger vehicle should have to await entry into the U.S.?
2. The Texas Department of Transportation, in conjunction with the Texas Transportation Institute, has deployed an automated wait time collection system at six of the busiest land border ports of entry in Texas, covering over 90% of U.S.- bound commercial traffic in my state. Will you commit to working with Texas to improve CBP's own data collection and assess automated technology solutions on a national scale?
3. The GAO report also indicated that CBP lacks credible performance measures that support the Agency's trade facilitation goals—what performance measures do you believe CBP should adopt to measure trade facilitation goals?

**Answer:**

Accurate information on wait times is critically important to the proper allocation of CBP's resources at ports of entry, including staff, technology, and infrastructure investment. Communication of accurate information is, moreover, an important public service that informs decision making by the operators of commercial and private vehicles. As a nominee, I have not yet had an opportunity to examine issues surrounding the collection and dissemination of wait time data, but I commit to do so if confirmed as Commissioner. If confirmed, I also commit to working with the State of Texas to assess best practices and improve CBP's performance in this area.

**Question 10: West Rail International Bridge**

Texas is poised to welcome the first international rail crossing in over 105 years in Cameron County. The West Rail International Bridge project was developed in response to vehicle-train accidents and fatalities in the 1990s and seeks to reduce congestion, address environmental concerns, improve safety and support economic development through the construction of a rail bypass that will no longer run through the city of Brownsville. Recognizing the significant benefits of the project, the federal government has approved over \$28 million in Recovery Act and other federal funds toward its completion, in addition to substantial time and resources invested by international, state, and local stakeholders.

1. Do you agree that the screening of international vehicular cargo is an inherently federal responsibility vested in CBP, to be carried out consistent with its dual trade facilitation and security missions? Is it your understanding that historically, CBP has deployed equipment and personnel in support of this function?
2. Under your leadership, what steps will CBP take to ensure the West Rail International Bridge is properly equipped to screen and process international rail traffic? Will you commit to considering innovative solutions, such as deploying new equipment or the approval of new technology to conduct cargo screening? How would you specifically seek to expedite the consideration and approval of such a solution, to avoid imposing further undue burdens on the local project sponsors and other stakeholders on both sides of the border?

**Answer:**

I agree that the screening of international vehicular cargo is a responsibility vested in CBP as part of its dual trade facilitation and security missions and that CBP has deployed equipment and personnel in support of this function. Consistent with the terms of the Presidential Permit governing the West Rail International Bridge, I will—if confirmed as Commissioner—work to ensure that CBP is properly equipped to screen and process international rail traffic. I would want to see CBP work with Cameron County to identify and deploy the most viable technology to screen cargo at the West Rail International Bridge.

**Questions from Senator Menendez****Question 1: CBP Use-of-Force Policy**

Since January 2010 at least 19 people have died as the result of alleged excessive use of force by CBP officials. The DHS OIG recently released a report on CBP use of force policies outlining steps the agency is taking, such as tracking use of force incidents. I think more can be done. When a young person throws rocks toward the border or a border agent, some agents respond with a gun and others don't seem to respond at all. There needs to be some consistency in the response to these incidents. Several members of Congress and I asked the DHS Office of Inspector General to complete a review of CBP's use-of-force

policy and practice and they recently issued their recommendations. In addition, CBP conducted its own review and sought the expertise of an outside review by the Police Executive Research Forum. As a result of these reviews, CBP announced on Sept. 25, 2013, that it is considering a series of reforms based on the more than 90 recommendations from these reviews.

- Mr. Kerlikowske, will you commit to implementing the recommendations issued by PERF and providing Congress and the public with maximum transparency regarding CBP's use of force policy including release of the PERF report
- What reforms should CBP prioritize to ensure its use-of-force policies and practices are in line with the highest professional law enforcement standards?

**Answer:**

I have spent my professional life as a law enforcement officer and a leader of law enforcement officers. As a law enforcement organization CBP must have the trust of the people they protect and open communication and transparent policies on the use of force are an important component in generating and keeping that trust. I understand that use of force policies need to account for independent judgment in a wide variety of different situations. The policies need to protect the public, but they also need to protect the officers and agents. If confirmed as Commissioner, I will carefully evaluate the recommendations of these outside reviews and where appropriate I will ensure that they implemented. I welcome engagement with members of this Committee on the path forward.

**Question 2: CBP's Detention Facilities and Conditions Issues**

I've seen troubling reports of substandard conditions in short-term CBP facilities from NGOs and the media for many years. Reports have detailed denial of medical care, inadequate food and water, extreme temperatures in hold rooms, denial of medical care, inadequate access to food, overcrowding, verbal and physical abuse, and denial of access to telephones. I'm especially concerned about the large numbers of unaccompanied minors suffering while in CBP custody.

- Would you support a transparent effort, similar to that of ICE, to create enforceable standards for CBP's short-term custody facilities and hold rooms, and to subject CBP facilities to regular inspections? Would you support the use of case managers at CBP detention facilities to help children held in CBP custody?

**Answer:**

CBP facilities should be safe, secure, and provide for the dignity and basic necessities of individuals held in short term custody. If confirmed, I will support enforceable standards for CBP's short-term facilities subject to regular inspection. In addition to oversight by CBP management, I will support external oversight by the Office of Inspector General, Government Accountability Office, and DHS Office of Civil Rights and Civil Liberties. And I will work with CBP's partners in Immigration and Customs Enforcement and HHS Office of Refugee Resettlement to avoid prolonged stays in CBP custody.

As a nominee, I have not had an opportunity to evaluate the use of case managers at CBP facilities. If confirmed, I will personally inspect a variety of these facilities. If confirmed, I look forward to exploring the options and providing additional information to your office.

**Question 3: Migrant Deaths**

**Last year, 463 people died in the United States while attempting to cross the border, a near record number, at a time when overall migration numbers are down. Simple measures like rescue beacons, which allow people in distress to call for emergency personnel, can be a crucial lifesaving tool for people attempting to travel through those areas in harsh conditions.**

- **As CBP Commissioner, how would you work to reduce the number of migrants that are dying on U.S. soil? Are there existing efforts, such as the deployment of distress beacons in key locations that could be expanded to prevent deaths by improving access to help from CBP in emergencies?**

**Answer:**

CBP's increased effectiveness in apprehending undocumented aliens between ports of entry is the most certain way to prevent migrant deaths. Rescue operations also routinely save lives, and if confirmed as Commissioner, I will support operations by specialized units, such as the U.S. Border Patrol's Search, Trauma and Rescue unit, to save the lives of migrants in distress.

I believe CBP can save lives by warning as to the dangers would-be migrants may face when attempting an unauthorized crossing. From my work at ONDCP and as a police chief, I know firsthand that targeted public affairs campaigns can also be effective at reducing attempted crossings. I have not yet had an opportunity to evaluate the use of distress beacons, but I commit to do so if confirmed as Commissioner.

**Question 4: CBP Role in Trade Facilitation and Enforcement**

**CBP plays the crucial and sometimes contradictory roles of facilitating trillions of dollars in cross-border trade while also enforcing trade laws and intellectual property rights, both of which are priorities for me, as well as performing its many law enforcement responsibilities, including counter-terrorism.**

- **In your opinion, where is CBP doing well and what are some areas that need attention? What do you see as your first year priorities on the trade side of CBP's mandate, and in your opinion how would The Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 (Customs Reauthorization Bill), introduced last year, assist CBP in performing its many missions?**
- **What additional resources may be needed—particularly at ports of entry—and what internal restructuring might be necessary to improve the CBP's capability to facilitate cross-border trade and travel, while adequately securing the border and enforcing U.S. laws and regulations?**

- **The protection of intellectual property rights and enforcement of our trade agreements are high priorities for me, and I would appreciate hearing how you intend to enhance these efforts while serving as CBP Commissioner.**

**Answer:**

From my discussions with leaders in the trade community and members of the Committee, I understand that CBP has made significant progress in external communication and willingness to collaborate with the private sector in all areas of its work. The examples of success most often cited are its Air Cargo Advance Screening Pilot (ACAS), a collaboration with express consignment operators that encourages early submission of data to identify high risk cargo; CBP's establishment of ten Centers of Excellence and Expertise, which align CBP's trade processing along industry lines; and CBP's recent progress using agile development to deploy essential elements of the Automated Commercial Environment.

During my testimony before the Committee, I identified my top trade priorities if confirmed as Commissioner:

- CBP needs to continue its efforts to transform its business processes, eliminating paperwork, expanding enrollment in trusted traveler programs, and deploying technology to minimize wait times at ports of entry. Time is money, not only for cargo but also for international travelers who wish to visit and spend money in the United States. The President's budget request recognizes that additional CBP officers are necessary to meet requirements at ports of entry. If confirmed, I will work the Congress to ensure that we make this important investment in human resources for our security and economy prosperity.
- CBP needs to continue to prioritize completion of the Automated Commercial Environment (ACE) and International Trade Data System (ITDS). This will establish a modern, flexible, automated foundation for the efficient transmission of data to all U.S. government agencies with a border nexus, ensuring the efficient entry and release of cargo.
- CBP needs to modernize its export process in support of the President's National Export Initiative to streamline exports and foster growth for U.S. companies. This needs to be done in close collaboration with CBP's private sector, government, and international partners.
- CBP needs to focus its enforcement resources to protect domestic producers from unfair competition, ensure that innovative national technologies and brand names are protected from threats, and protect domestic consumers from unsafe, substandard products. I look forward to working with this Committee on this priority.
- CBP needs to build and retain a world class, knowledge-based trade workforce to interact effectively with the public and the trade community. Critical to this effort will be addressing morale challenges agency-wide that have been identified in the Federal Employee Viewpoint Survey. CBP's employees are its most important resource; their training, development, and effective management require sustained leadership attention. If confirmed, this too will be a major priority.

I have reviewed the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 and support its intent to authorize CBP and ensure a proper focus on its trade-related responsibilities. As a nominee, I am interested in learning more of the background to the provisions of this bill, and working with CBP officials and Congress to address issues of concern.

As noted above, agency officials, leaders in the travel and trade communities, and members of this Committee have repeatedly communicated to me that CBP staffing shortfalls are a significant challenge in the air, land, and sea environments. If confirmed as Commissioner, it will be a top priority to ensure that ports of entry are adequately staffed with CBP officers and Agriculture Specialists to meet the agency's important trade and security mission requirements.

CBP has identified a need and a strategy, based on a sophisticated workload staffing model, for 3,811 additional officers. Congress, in the Consolidated Appropriations Act of 2014, funded 2,000, which is an important step forward. I look forward to working with this Committee, others in Congress, and private sector stakeholders to identify sources of funding to address the remaining shortfall.

Finally, the U.S. government's protection of intellectual property rights is not only essential for protecting our economy, it is critical to our health, safety, and national security. If confirmed as Commissioner, I will focus on developing CBP's partnerships with the private sector to expand trade intelligence concerning IPR violations, provide continuous training of CBP's workforce, collect advance information where possible for authentic goods, and develop authentication tools that can be used in the field.

CBP's creation of Centers of Excellence and Expertise has helped to develop and coordinate industry-specific expertise to identify and interdict IPR-infringing imports. That effort needs to continue and feed a strengthened partnership with ICE-HSI and other law enforcement agencies at the National IPR Center.

Finally, CBP—together with the Office of the U.S. Intellectual Property Enforcement Coordinator and its partners in the federal government—needs to explore with this Committee prior disclosure incentives and legal tools that can make CBP's enforcement at the border more effective.

#### Questions from Senator Toomey

##### Question 1:

**The Port of Philadelphia is vital to the economy of Southeastern Pennsylvania and supports employment across the state and region. Fruit products, in particular, are tremendously important. Delaware River Ports import more than \$2 billion worth of fruit each year. Fruit imports are subject to the agriculture quarantine inspection (AQI) program, a lengthy and labor intensive inspection process, before they can be released to retailers. I frequently hear from my constituents about processing delays that result from inadequate**

staffing of the AQI program. These delays can result in fruit perishing before it even leaves the docks.

**A specific complaint is that CBP will refuse to add additional inspection shifts, despite my constituents' willingness to pay overtime fees. It has been stated that CBP will refuse overtime, because the fees assessed do not fully cover total operating costs. Specifically for agricultural inspections, what is the most appropriate reimbursable overtime rate that would reflect CBP's total cost of providing overtime services?**

**Answer:**

CBP plays an important role in the process to import agricultural items in Philadelphia and elsewhere in the United States. I understand that current reimbursable rates, which are set by the U.S. Department of Agriculture (USDA), do not reflect the current cost of reimbursable overtime for CBP Agriculture Specialists. If confirmed, I intend to conduct a thorough review of reimbursable overtime rates and personally engage with the Administrator of USDA's Animal and Plant Health Inspection Service to ensure that the reimbursement rate set by regulation accurately reflects the cost of services provided. I will also work diligently with Secretary Vilsack and his staff to insure that CBP has a productive overall working relationship with USDA to insure that we are coordinated and producing the best possible results for the U.S. economy.

**Question 2:**

**It has been brought to my attention that operating the AQI program is a joint effort between the United States Department of Agriculture via the Animal and Plant Health Inspection Service (APHIS) and the Department of Homeland Security via Customs and Border Protection (CBP).**

**A March 2013 Government Accountability Office (GAO) report found that in 2011 CBP incurred 81% of AQI program costs, yet only received 60% of collected AQI fees. GAO found that this created a funding delta which prompted CBP to transfer \$348 million from other accounts to the AQI program. What impact did this have on CBP's ability to effectively facilitate trade? If this was problematic, what measures could be taken in the future to ensure better program outcomes?**

**Answer:**

In a time of constrained appropriated resources, it is critical to maximize the effectiveness of user fees, where appropriate. I understand that CBP's agriculture program is not currently recovering its full costs through user fee revenue, diverting resources away from other important trade and security functions performed by the agency.

I have been informed that USDA/APHIS is in the process of updating the AQI user fee rates through a rulemaking process. If confirmed, I commit to working with USDA/APHIS to ensure that the forthcoming rules provide reimbursement for the AQI program. If confirmed, I will also work with USDA/APHIS to address each of the concerns raised by GAO, intended to strengthen and sustain this important program.

**Question 3:**

**To many of my constituents, the inspection criteria for agricultural imports seem arbitrary and unpredictable. What is CBP's role in determining what inspection practices must occur for agricultural imports? Would CBP be willing to take a larger role in providing commodity specific guidance on pest risk and need for quarantine activities for agricultural products?**

**Answer:**

CBP's current role in the agriculture inspection program is to enforce inspection policy determined by USDA/APHIS. As a nominee, I have not yet had an opportunity to be briefed on opportunities for CBP to provide commodity specific guidance for agricultural products. I have been made aware, however, of trade concerns related to the consistency of CBP's inspection and treatment of agricultural commodities at ports of entry. If confirmed, I will review these concerns with a view toward enhancing transparency and predictability of agriculture inspection requirements to the greatest degree possible.

**Question 4:**

**I am aware that CBP's Automated Commercial Environment (ACE) data processing system has transitioned from a holistic approach of delivering comprehensive systems to an agile approach of developing specific functionality. What efforts or what approaches is CBP taking to address concerns raised by private industry and any technical issues that arise during or as a result of previous deployments?**

**Answer:**

I commit to this committee and the trade community my personal attention and focused effort to successfully completing and fully implementing ACE. If confirmed as Commissioner, CBP's successful and timely deployment of ACE will be among my highest priorities. As a nominee, I have not yet had an opportunity to be briefed on specific technical issues that have posed challenges to the program. I understand, however, that the agile methodology adopted by CBP allows more collaboration with private sector stakeholders than ever before on the development and deployment of ACE functionality, including review of previous deployments. Since my nomination, leaders in the trade community have expressed support for ACE's recent progress. If confirmed, I will continue and deepen this collaboration with the trade community.



**Senator Roberts Questions for the Record – Kerlikowske 1/15/14**

**Note: additional text from the original submission is noted in italics**

**Question 1: Does Customs and Border Protection (CBP) have independent authority to make stops and searches of general aviation (GA) aircraft not operating near a US border?**

**Answer:** As a nominee, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft. However, if confirmed I will work quickly to gain a full understanding of this issue.

*Subsequent to your request for more information I requested and received a briefing by CBP in response to this question. The legal authority is included in this response. The authority to take these actions is based on the individual's operation of an aircraft, not the aircraft's connection to the border. I understand that law enforcement officers and agents within CBP are vested with the enforcement authorities granted to customs officers and immigration officers under federal law. Additionally, CBP Office of Air and Marine (OAM) agents and officers exercise authorities under federal aviation law, specifically 14 C.F.R. §§ 61.3(l) and 91.203, as well as 49 U.S.C. § 44103(d), to inspect a pilot's operating certificate and related aircraft documents.*

**Question 2: What are the reasons that CBP's Office of Air and Marine would be tracking domestic GA aircraft, particularly GA activity well within 100 miles of any US border?**

**Answer:** As noted, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft. If confirmed, I will review CBP operations in this area

*I was recently briefed by CBP on this issue. In accordance with National Security Presidential Directive (NSPD)-47 (National Strategy for Aviation Security)/Homeland Security Presidential Directive (HSPD)-16 (Aviation Security Policy), CBP shares the responsibility with other federal partners to maximize aviation security for the United States and advance common security interests in the air domain. The Aviation Operational Threat Response Plan, one of seven supporting plans defined by NSPD-47/HSPD-16, tasks CBP with responsibility for detecting, identifying, and interdicting potential air threats to national security, and providing investigative case support for prosecution of criminal law violations within its jurisdiction. CBP, via the CBP Air and Marine Operations Center (AMOC) integrates radar and other data from partner agencies to develop a complete picture of the National Airspace System and routinely provides domain awareness to federal, state, local, tribal and international law enforcement and regulatory agencies. I appreciate that as a nominee I do not have access to data that may be internal to CBP. You have my commitment to look further into this issue if I am confirmed.*

**Question 3: Do you believe CBP, or any agency within DHS for that matter, should be conducting stops and searches on GA aircraft without reasonable suspicion of illegal activities or probable cause to conduct a search?**

**Answer:** I believe CBP must follow the law with regard to all search and seizure activity. As a nominee, I have not yet been briefed in detail about CBP's enforcement activities with respect to general aviation aircraft.

*I was recently briefed by CBP on this issue. Law enforcement officers and agents within CBP are vested with the enforcement authorities granted to customs and immigration officers under federal law as noted in Q.1. Beyond the legal authority to conduct stops, searches, and seizures, however, there may be legitimate questions as to whether CBP is using its resources most effectively or unduly burdening general aviation aircraft operators and passengers as part of its enforcement activities. I understand that there has never been a Commissioner-level review of this program. If confirmed, you have my commitment to conduct a personal, in-depth review of CBP's general aviation enforcement activities.*

**Question 4:** If confirmed as Commissioner of U.S. Customs and Border Protection, can I get a commitment from you that I will receive a written response – with records of the stops and searches of GA aircraft that I have requested - and that you will continue to work with me on this issue to end unlawful stops and searches of GA aircraft traveling solely within domestic borders?

**Answer:** If confirmed, I will ensure that CBP provides a response to your inquiry. I will also evaluate CBP's enforcement activity in relation to general aviation aircraft. If I find that any such enforcement activities exceed the agency's authority, violate the U.S. Constitution, or are in any other way contrary to law, I will take immediate corrective action.

*I have been advised by the DHS Office of Legislative Affairs that the Senator will receive a response to his letter. As a nominee, I have not been provided a copy of the letter.*

Senator Portman Questions for the Record – Kerlikowske 1/15/14Note: additional text since the original submission is noted in italics

**Question 1:** Companies involved in section 337 litigation have indicated that as the mission of CBP has changed, the process for enforcing exclusion orders also has changed, and that there is now some confusion about who at CBP is involved in the enforcement of exclusion orders, the responsibilities of the offices involved, and the qualifications of the individuals. To help us better understand the resources devoted to section 337 enforcement, please provide a breakdown of the process -- including (a) the number of employees involved at the various stages of review, and (b) the qualifications of the staff attorneys who review the administrative record and of the field personnel, including targeters and import specialists.

**Answer:** CBP has an important role in enforcing exclusion orders, which mainly involve patent violations, issued by the International Trade Commission. As a nominee, I have not yet had an opportunity to examine the roles, responsibilities, and resources of the relevant CBP offices. If confirmed, I commit to do so.

*Subsequent to your request, I requested additional information from CBP on this subject. I understand that ITC exclusion orders are mostly patent-based and that they direct CBP to refuse entry to those articles that are covered by the claims of the infringed patents rather than, instructing CBP to deny entry to specific articles of merchandise that can be readily identified, such as by model numbers. CBP's brief indicated that these exclusion orders involve very complex questions of law and issues of fact that must be decided by CBP at the border, usually in thirty days or less. I understand that the ITC usually decides questions of patent law infringement within twelve months after a hearing on the record informed by expert testimony. Because of the challenges presented by exclusion order enforcement, CBP informed me that it meets regularly with the ITC. According to CBP briefers, an example of this kind of interaction is ITC submitting draft copies of proposed orders to CBP for review and comment. Additionally, CBP said that immediately following and, where possible, before the issuance of an order, CBP, through its Centers of Excellence and Expertise (CEE) and the attorneys in the Office of International Trade, works with the ITC and the complainant, as well as with respondent(s) and importers, to develop an appropriate enforcement profile.*

*I understand that the enforcement of exclusion orders presents complex questions of law and issues of fact that by statute must be decided in a short period of time and that the typical exclusion order directs CBP to refuse entry to articles that infringe the relevant patent rights. For this reason, the scope of an exclusion order is not limited to those product models found to infringe at the ITC, but also covers any infringing products developed after the issuance of an exclusion order, even where a subsequently developed product was redesigned in an attempt to avoid infringement. Therefore, due to the nature of exclusion orders, CBP is often required to determine whether redesigned products that were not at issue before the ITC fall outside the exclusion order's scope and are therefore admissible or, conversely, whether the redesigned products have not avoided infringement and must be excluded from entry. I appreciate that this is a complicated issue that deserves attention.*

*If I am confirmed, I commit that I will make it a priority to study the issue of patent violations, and work to insure that there is no confusion at CBP concerning enforcement of exclusion orders, or the responsibilities of the relevant offices involved in this process.*

**Question 2:** I understand that the only regulation addressing exclusion orders, 19 C.F.R. 12.39, provides no guidance on what procedures should be followed for determining whether a product is covered by an exclusion order, and that the last Customs directive is 13 years old, adds only minimal clarity, and does not have the effect of a regulation. The end result is unpredictability and confusion. Is the CBP considering updating its regulations and procedures?

**Answer:** I understand that there is an inter-agency review of the ITC exclusion order process. I also understand that CBP is considering changes in its administrative rulings process that would potentially allow more meaningful input by all parties. If confirmed I will ensure that CBP continues its work with its partners in government, the private sector, and on this Committee to improve the exclusion order process.

*I have been advised by CBP that the agency is working to amend 19 C.F.R. § 12.39 and that CBP is working on a significant revision of the existing Exclusion Order Directive (CBP Directive No. 2310-006A). CBP anticipates that when finalized the revised directive (which will be made publicly available), will afford greater guidance and transparency on the enforcement of ITC exclusion orders. If I am confirmed, I commit that I will study this issue carefully. I am a firm believer that clarity and transparency is of paramount importance and I will seek to insure that CBP operates in this manner as well.*

**Question 3:** Some stakeholders have complained that the process at Customs for enforcing ITC exclusion orders is broken and requires urgent attention. In particular, parties seeking to enforce exclusion orders, as well as parties subject to them, claim that CBP's enforcement process lacks transparency. In June, the White House Intellectual Property Enforcement Coordinator initiated an interagency review of existing CBP and ITC procedures to ensure that activities related to the enforcement of exclusion orders are conducted in a manner that is transparent, effective, and efficient. What is the status of these interagency efforts? What will you commit to do to ensure that CBP promotes transparency in its enforcement activities?

**Answer:** I understand that there is a broad executive branch review of the exclusion order process and that CBP is considering changes in its administrative rulings process that would allow more meaningful input by all parties. As a nominee, I have not yet been briefed on the status of these efforts. If confirmed, I will ensure that CBP continues its work with its partners in government, the private sector, and on this Committee to promote transparency in its exclusion order enforcement activities.

*I have asked CBP for background on this matter. So far as CBP is aware, there have been no interagency meetings regarding the review of CBP and ITC procedures. CBP, however, has communicated to me that the agency is committed to working with other stakeholders in the interagency exclusion order review process being undertaken by the U.S. Intellectual Property Enforcement Coordinator (IPEC). In this regard, CBP has apparently considered the comments submitted in response to the IPEC's Federal Register notice and is moving forward, in preparation for the interagency review, with proposed recommendations that would not only transform CBP's current ex parte process to an inter partes approach, but would also ensure added ITC visibility of exclusion order rulings and decisions issued by CBP. CBP and the ITC have formed a working group to explore ways in which the two agencies might more closely align CBP's enforcement role with the ITC's post-order review and relief provisions. As Director of ONDCP I have coordinated the inter-agency process and I know how much progress has been made when you have a collaborative environment. This was also important in my career as a police chief, and I will carry this spirit to the job of Commissioner, if I am confirmed.*

**Question 4:** The ex parte nature of CBP's current process for adjudicating exclusion order rulings has been of particular concern among both stakeholders and commentators, who complain that the process lacks an opportunity for complainants and importers to respond. For example, CBP issues decisions on whether proposed design-arounds address the infringement that gave rise to the exclusion order without giving the party that obtained the order an opportunity to respond. I understand Customs is working toward transitioning to an inter partes procedure for adjudicating exclusion order rulings. What is the status of this transition and when do you expect to implement an inter partes process? What other steps will you take to ensure that the agency hears from both parties to each dispute and is able to address these practical concerns about the lack of transparency and fair process?

**Answer:** I also understand that CBP is working with the ITC toward transitioning to an *inter partes* process. As stated above, I have not yet had an opportunity to be briefed on the status of this transition or other reforms to the exclusion order process.

*In researching this issue, I have been advised that while CBP currently operates in an ex parte environment, it is working toward the development of an inter partes procedure for adjudicating exclusion order rulings. Once the inter partes proceeding is developed, CBP will no longer have to make determinations based in large measure on input from one side to the dispute. Instead, by adopting such a proceeding, CBP, like the ITC during the initial investigation, will have an opportunity to hear from both sides and allow them to make arguments while rebutting those of the other side. CBP anticipates that such an adversarial proceeding would have tremendous benefits, including the opportunity to make stronger and more decisive determinations since they would be based on input from both sides, as well as making these determinations in a more expedited manner since both parties would be pointing to relevant portions of the ITC investigation history. The ITC Trial Lawyers Association and the American Bar Association's Section of Intellectual Property Law have endorsed the concept of creating an inter partes procedure at CBP. CBP anticipates that it will be publishing a Notice of Public Rulemaking later this year with a view to revising 19 C.F.R. pt. 177 to implement the inter partes procedure.*

*In the interim, CBP advised me that it is committed to promoting transparency – and, as noted above that is a practice I wholeheartedly endorse. I am told that although the current CBP exclusion order rulings process is conducted on an ex parte basis, CBP notifies the complainant and the ITC whenever it issues a ruling involving a particular exclusion order and that CBP provides complainants and the ITC with a copy of its decision. If the complainant disagrees with CBP's determination it can request that the ruling be modified or revoked.*

**Opening Statement of L. Paige Marvel  
Nominee for Judge, U.S. Tax Court  
Senate Committee on Finance  
January 15, 2014**

Chairman Baucus, Ranking Member Hatch, and distinguished members of the Committee on Finance, thank you for the privilege of appearing before you today. I last appeared before this Committee almost 16 years ago after I was nominated for my first term as a Tax Court Judge. I am grateful to President Obama for nominating me for a second term on the Court, and I am grateful to you and to the Committee's staff for the help given to me throughout this process. Senator Hatch, I am particularly grateful for your statement about my pending nomination during the confirmation hearing of my colleague, Chief Judge Michael B. Thornton.

I would be remiss if I did not also acknowledge and thank Senator Ben Cardin and his staff for the help they gave me both before and after the President announced my nomination. I am a lifelong resident of the State of Maryland and I have followed Senator Cardin's political career from the time he was rising in the ranks of the Maryland State legislature. He has been my Delegate, Representative, and Senator for decades. I have long admired his commitment to constituent service and I have benefitted from it several times. Senator Cardin, thank you for your continuing excellent service to the State of Maryland and to this country.

I would like to take this opportunity to introduce my family and to thank them for the support they've given me during my career. My husband of almost 40 years, Robert H. Dyer, Jr., has been my greatest supporter and friend since we first met in 1971 at the University of Maryland School of Law. We have two children. Our son, Alex Dyer, holds a B.S. degree in architecture from Washington University in St. Louis, and intends to pursue a career as an architect. Our daughter, Kelly Dyer, holds a B.S. degree in neuroscience and behavioral biology from Emory University, and is currently working in Atlanta as a research assistant in a public health project while she studies for the MCAT examination.

Two very important members of my family could not be here but deserve recognition. My mother, Louise Harrison, is 92 years old but, due to health problems, can no longer travel. If she were here, she would tell you that she served this country honorably during World War II as a U.S. Army nurse anesthetist on a hospital ship in the Atlantic Ocean and in the Mediterranean. She would also tell you, whether you asked or not, that if you want to honor her service, you should confirm her daughter. My sister, Vicki Marvel, is a school counselor in a middle school in Norman, OK, who looks after my mother and who is recuperating from knee replacement surgery. I thank both of them for making me the person I am today.

My professional staff is also here today. Angela Frith is my chambers administrator. Chaim Gordon and Doug Longhofer are my law clerks. Together, they keep my chambers functioning at a very high level and I am grateful for their hard work on my behalf. I also want to thank my colleagues, Chief Judge Michael Thornton, Judge John Colvin, and Judge Joseph Gale, for supporting me by attending this hearing.

Before I joined the Tax Court in 1998, I practiced tax and business law for 24 years and clerked for several years before that. I tried cases in the Tax Court and in other Federal and State courts throughout this country. That experience led me to appreciate both the benefits and burdens of the litigation process and the effect that it has on the people it touches. As a Tax Court judge for almost 16 years, I have taken my experience and applied it to the courtroom over which I preside. I make every reasonable effort to treat litigants fairly, to alleviate the fear that many litigants and witnesses have when they enter a courtroom, to assist litigants in understanding what they must prove, and to help them build the record I need to decide a case fairly. I am mindful that the Tax Court is the Federal court that handles the vast majority of Federal tax litigation in this country and that it has a very large population of *pro se* or self-represented taxpayers. Congress designed the Court to be a litigation forum for all taxpayers, represented or not, and I will continue, if confirmed, to honor Congress' intention by approaching cases with an open mind and a commitment to justice.

Thank you again for considering my nomination. I would be happy to answer any questions you might have.

SENATE FINANCE COMMITTEE  
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.): Lynda Paige Marvel
2. Position to which nominated: Judge, United States Tax Court
3. Date of nomination: July 31, 2013
4. Address: (List current residence, office, and mailing addresses.)  

Residence/Mailing:	Office:
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5. Date and place of birth: 12/6/1949; Easton, MD
6. Marital status: (Include maiden name of wife or husband's name.)
7. Names and ages of children:
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
  - High School: Sts. Peter and Paul High School, 1963-1967 (H.S. Diploma)
  - College: College of Notre Dame of Maryland (now Notre Dame of Maryland University); 1967-1971; B.A. Degree (Magna Cum Laude)
  - Law School: University of Maryland School of Law; 1971-1974; J.D. (with honors)
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)



United States Tax Court

- Position: Judge (April 6, 1998 – present)
- Location: Washington, DC

Venable, Baetjer, and Howard, LLP

- Position: Partner (September 1988 – March 30, 1998)
- Location: Baltimore, MD

Melnicove, Kaufman, Weiner, Smouse, & Garbis, P.A. (now defunct)

- Position: Attorney and Shareholder (April 1986 – August 1988)
- Location: Baltimore, MD

Garbis, Marvel & Junghans, P.A. (now defunct) (Formerly Garbis & Schwait, P.A.)

- Position: Attorney and Shareholder (September 1974 – April 1986)
- Location: Baltimore, MD

Garbis & Schwait, P.A. (now defunct)

- Position: Law Clerk (part time) (January 1972 – August 1974)
- Location: Baltimore, MD

Ellin & Baker

- Position: Law Clerk (part time) (September (approx.) 1971 – August 1972)
- Location: Baltimore, MD

10. **Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**
  1. Member, Advisory Committee, U.S. District Court for the District of Maryland (1990-1993)
  2. Member, Advisory Committee, U.S. Claims Court (1989-1991)
  3. Member, Commissioner's Review Panel on IRS Integrity (1989-1991)
  4. Appointed as Commissioner to the Commission to Revise Annotated Code of Maryland for purpose of revising tax provisions of the Code (1981-1987); Chairman, Procedure Subcommittee (1981-1987)
  5. Member, Advisory Commission to the State of Maryland Department of Economic and Community Development (1978-1981)
11. **Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**
  1. Partner, Margaret's Landing Partnership; EIN 52-1572510; 1976 – present. This partnership was formed by 3 couples (of which my husband and I are one) to

subdivide and sell unimproved real estate on the Eastern Shore of Maryland that we purchased in approximately 1976. Of the original property purchased, the partnership currently owns one marketable lot and one lot that is not marketable.

2. I also serve as trustee of two trusts – a revocable trust for my mother, Louise H. Harrison, who is 91 years old, and an irrevocable trust known as the Richard E. Harrison Trust. Richard E. Harrison was my stepfather; he died in 2007. The primary beneficiary is my mother; my sister, Vicki A. Marvel, and I are the contingent beneficiaries.

**12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

1. Member, American College of Tax Counsel, 1992 – present
  - a. Regent, 1995 – 1998
2. Member, American Bar Association, Section on Taxation, 1974 – present
  - a. Vice Chair, Committee Operations, 1993 – 1995
  - b. Council Director, 1989 – 1992
  - c. Committee Chair, Court Procedure Committee, 1985 – 1987
3. Fellow, American Bar Foundation, 1989 – present
4. Fellow, Maryland Bar Foundation, 1991 – present
5. Member, American Law Institute, 1996 – present
6. Advisory Committee, University of Baltimore Graduate Tax Program, 1986 – present
7. Member, Stoneleigh Improvement Association, 1982 – present
8. Parishioner, Church of the Redeemer, Baltimore, MD, 2000 (approx.) – present
  - a. Registrar, 2004 – 2008 (approx.)
9. Member, Friday Tax Lunch Group, 2010 – present
10. Member, National Aquarium in Baltimore, 1984 – present
11. Member, The Baltimore Museum of Art, 1988 – present
12. Member, The Walters Art Gallery, Baltimore, MD, 1989 – 1995; 1998; 2004; 2013
13. Member, The Kennedy Center, 2012 – present
14. Member, AARP, 2007 – present
15. Member, AAA, 1998 – present
16. Trustee, American Tax Policy Institute, 1997
17. Member and Council Member, Federal Bar Assn., Tax Section, 1984 – 1990
18. Maryland State Bar Association:
  - a. Member, 1974 – present
  - b. Member, Board of Governors, 1988 – 1990, 1996 – 1998
  - c. Chair, Tax Section, 1982 – 1983
  - d. Member, Tax Section Council, 1978 – 1980
19. Bar Association of Baltimore City:
  - a. Member, 1974 (approx.) – 1998 (approx.)
  - b. Member, Executive Council, 1977 – 1978, 1992 – 1993
  - c. Chair, Young Lawyers' Section, 1981 (approx.)
20. Barrister, J. Edgar Murdock Inn of Court, 1988 – 1993
21. Member, U.S. District Court for the District of Maryland Advisory Committee, 1990 – 1993

22. Member, U.S. Claims Court Advisory Committee, 1989 – 1991
23. Advisor, ALI Restatement of the Law Third-The Law Governing Lawyers, 1988 – 2000
24. Member, National Assn. of Criminal Defense Lawyers, 1987 – 1998 (approx.)
25. Member, Maryland Assn. of Criminal Defense Lawyers, 1987 – 1998 (approx.)
26. Member, Commissioner's Review Panel on IRS Integrity, 1989 – 1991
27. Member, Commission to Revise the Annotated Code of Maryland (tax provisions)
  - a. Member, 1981 – 1987
  - b. Chair, Procedure Subcommittee, 1981 – 1987
28. Member, Trial Courts Judicial Nominating Commission for the 8th Judicial Circuit, 1981 – 1983
29. Baltimore Association of Tax Counsel:
  - a. Member, 1975 – 1982
  - b. Treasurer, 1979 – 1980
30. Member, Advisory Commission to the State Department of Economic and Community Development, 1978 – 1981
31. Member, Women's Banking Advisory Commission to Suburban Trust Bank, 1980 – 1981
32. Women's Law Center:
  - a. Member, 1974 – 1990 (approx.)
  - b. Vice President, Litigation, 1976 – 1978
  - c. Member, Board of Directors, 1978 – 1981
33. Member, Keswick Improvement Association, 1977 – 1982
34. Member, Caroline Country Club, approx. 1987 – 1997
35. Member, Sierra Club, 1991 (approx.)
36. Member, Chesapeake Bay Foundation, 1990 – 1997 (approx.)
37. Member, Baltimore Zoological Society, 1990 – 1997 (approx.)
38. Member, Maryland Public Television, 1996 – 1997 (approx.)
39. Member, Baltimore Opera Company, 1980 – 1997 (approx.)
40. Member, Colonial Williamsburg Foundation, 1990 – 1997 (approx.)
41. Member, World Wildlife Fund, 1990 – 1997 (approx.)
42. Member, Habitat for Humanity International, 1990 – 1997 (approx.)
43. Member, Maryland Science Center, 1990 – 1997 (approx.)
44. Spouse of Member, Country Club of Maryland, 2002 – 2008 (approx.)
45. Member, Serjeants' Inn Law Club, 1988 – 2000 (approx.)
46. Member, Rule Day Law Club, 1992 – 2000 (approx.)

**13. Political affiliations and activities:**

- a. List all public offices for which you have been a candidate.  
  
None.
- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

- c. **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.**

None.

**14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)**

1. Recipient, President's Medal, College of Notre Dame (now, Notre Dame of Maryland University), 2006
2. Recipient, Jules Ritholz Memorial Merit Award, ABA Section of Taxation, Committee on Civil & Criminal Penalties, 2004
3. Recipient, 1st Annual Tax Excellence Award, Maryland State Bar Association, Section of Taxation, 2002
4. Who's Who in the World, 2006 – 2010
5. Who's Who in America, 1997 – 2010
6. Who's Who in the East, 2000 – 2006
7. Who's Who in American Law, 1994 – 2012
8. Who's Who of American Women, 2004 – 2011
9. Best Lawyers in America, 1991 – 1998
10. Selected as one of "Maryland's Top 100 Women" for 1998
11. ABA Section of Taxation, Distinguished Service Award, May 1995
12. ABA Section of Taxation, Certificate of Recognition, May 1987
13. MSBA Distinguished Service Award, 1982 – 1983
14. One of Baltimore Magazine's "81 People to Watch in 81", January 1981
15. "Outstanding Young Woman of America" Nominee, 1980
16. "Baltimore's Best" Award of Recognition, 1980
17. Maryland Senatorial Scholarship, 1967 – 1971
18. Scholarship from College of Notre Dame of Maryland, 1967 – 1971
19. Member, Phi Alpha Theta (honorary fraternity), 1971
20. Member, Delta Epsilon Sigma (honorary fraternity), 1971
21. Member, Order of the Coif, 1974
22. Selected for membership to the Maryland Law Review and the Moot Court Board, University of Maryland School of Law, 1972 – 1974
23. Who's Who in American Colleges and Universities, 1970 and 1971

**15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)**

I have done my best to identify all books, articles, reports or other published materials, including a thorough review of personal files and searches of publicly available electronic

databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

1. Author, "Blind Dumb Luck", *Careers in Tax Law: Perspectives on the Tax Profession and What It Holds For You*, pp. 20-24 (ABA Section of Taxation, copyright 2009).
  2. Co-author, "Procedure: Tax-Property", *Maryland Taxes*, MICPEL, 1991.
  3. Author, "Procedure: Tax-General", *Maryland Taxes*, MICPEL, 1989, 1991, 1993.
  4. Author, "Tax Aspects of Divorce and Separation", *Maryland Divorce and Separation Law*, MICPEL, 1979, 1982, 1985, 1987, 1992, 1996.
  5. Author, "Admissions and Amusement Tax", *Maryland Taxes*, MICPEL, 1982.
  6. Contributor, "What Every Lawyer Needs to Know (An Internal Revenue Audit)", *ABA Journal* 64, 66 (August 1996).
  7. Author, "Refund Claims and Forum Selection After Lundy", *84 Journal of Taxation* 303 (May 1996).
  8. Author, "A Checklist for Litigating the Civil Fraud Penalty Case", *4 The Practical Litigator* 71, July 1993.
  9. Author, "The Fiduciary in Tax Trouble", *Proceedings of the University of Southern California Law Center Fortieth Tax Institute*, 1988.
  10. Author, "The Proposed Amendments to Circular 230 - The Search for an Appropriate Disciplinary Standard for Tax Practitioners", *FBA Section of Taxation Report*, Summer 1987.
  11. Author, "Opinion 85-352: ABA Restates Standard Applicable to Attorneys Advising Clients Regarding Positions on Tax Returns", *FBA Section of Taxation Report*, Summer 1986.
  12. Author, "Choosing the Best Tax Forum: The Factors to be Considered", *The Practical Accountant*, July 1986.
  13. Author, "Forum Selection in Federal Tax Litigation", *8 Litigation* 39, Summer 1982.
  14. Author, "Estate and Gift Tax Reporting Rules Much More Complex Due to TRA 1976", *Estate Planning*, January 1978.
  15. Author, "Supreme Court's Decision in Fisher Requires Greater Alertness in Handling Tax Fraud Cases", *The Practical Accountant*, July/August 1976.
16. **Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)**

See attachment 1.

**Attachment 1 – Part A. Question 16 (Public Remarks)****LIST OF PRESENTATIONS FROM 5/1/09 THROUGH 8/1/2013**

I have done my best to identify all formal speeches delivered during the past five years which are on topics relevant to the position, including thorough a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

5/13/09	Presentation to Bay Area Tax Litigators (Outline provided)
7/23/09	Panel Presentation on Specialized Federal Courts for National Association for Women Judges (Outline provided)
10/9/09	Presentation to students/faculty in the University of Florida Tax LLM Program (Outline provided)
11/17/09	Presentation regarding Litigation in the U.S. Tax Court to Loyola University Law School Tax Students and Faculty
1/23/10	Panel presentation at ABA Tax Section Midyear Meeting
2/23/10	Presentation to Tax Litigation Class at University of San Diego Law School (Outline provided)
6/18/10	Panel presentation at NYU 2nd Annual Tax Controversy Forum (Outline provided)
12/8/10	Presentation to Arizona Bar Association Tax Section (Outline provided)
3/1/11	Presentation at Virginia Bar Assn. Tax Section Luncheon
5/6/11	Panel presentation on Deposition Strategies at Court Procedure Committee Roundtable at the ABA Tax Section May Meeting (Outline provided)
5/12/11	Shulbank Lecture - at the Maryland State Bar Assn. Tax Section Shulbank Dinner (Outline provided)
9/13/11	Presentation to Loyola University (Los Angeles) Tax LLM Students and Faculty (Outline provided)
12/1/11	Panel presentation at ABA Tax Controversy Institute, Las Vegas, NV
1/12/11	In house presentation to Tax Court Law Clerks

2/15/12	Panel presentation re Tax Court at 2012 New Attorney Orientation, Office of Chief Counsel
3/29/12	Remarks at Dinner celebrating the 20th Anniversary of the Georgia State University Low-Income Taxpayer Clinic (Remarks provided)
4/6/12	Presentation to Tax LLM students and faculty at University of Florida (Outline provided)
4/17/12	Presentation to San Diego County Bar Association Tax Section (Outline provided)
11/27/12	Remarks at LITC/Law Student Reception at Gonzaga University
1/25/13	Panel presentation at ABA Tax Section Meeting in Orlando, FL
3/20/13	Remarks at luncheon sponsored by the Bay Area Young Tax Lawyers and the San Francisco Tax Club (Outline provided)
5/1/13	Presentation to the Greater Denver Tax Counsel (Outline provided)

I have also spoken at and/or moderated panels at every Tax Court Judicial Conference held during this period.

17. **Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)**

Before my appointment to the Tax Court in 1998, I represented taxpayers before the Internal Revenue Service, the Maryland Comptroller of the Treasury, and Federal and State courts in all types of civil and criminal tax disputes. I enhanced my legal skills as a tax litigator in the United States Tax Court. I tried cases in the United States Tax Court, in various Federal District Courts, and in a variety of State Courts, and I argued appeals before the Court of Appeals for the Fourth Circuit, the Maryland Court of Appeals, and the Maryland Court of Special Appeals. I am very familiar with the Rules of Practice and Procedure of the U.S. Tax Court, and the Federal Rules of Evidence, which govern proceedings in the Tax Court. Since my appointment to the Tax Court in 1998, I have presided over numerous trial sessions across the United States, and I have resolved thousands of cases by agreement or trial. If confirmed, I believe that I would bring a balanced and even-handed perspective to my job as a judge, that I am sensitive to the Court's mission to provide a fair forum for all litigants including the self-represented, and that I approach my job as a judge with the attitude that I should leave the litigants and the tax system, whenever possible, in a better position than when the litigation started. I not only try "to do no harm" but I also work to address systemic behavior problems, such as chronic failure to file and tax defer rhetoric, so that the taxpayer understands the need to adjust those behaviors and the consequences of failing to do so.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. **Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**

Yes with the following exceptions:

1. I am currently a judge of the United States Tax Court seeking a nomination for a second term. If confirmed, I would be honored to continue the relationship with my current employer.
2. The ownership interest of my husband and myself in Margaret's Landing Partnership poses no actual or potential conflict of interest. Consequently, I expect to retain this investment interest unless required to dispose of it under applicable law or under the ethical rules governing the conduct of Tax Court judges.
3. I intend to continue to serve as trustee of my mother's and deceased stepfather's trusts. I am not compensated for so serving and do not intend to claim any compensation in the future.



2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Tax Court judges are appointed for 15-year terms. Under 26 U.S.C. section 7447(b) (1), a Tax Court judge must retire upon attaining the age of 70. While I am willing to serve a full 15-year term if nominated and confirmed for a second 15-year term, I will attain the age of 70 before I can complete the full term.

#### **C. POTENTIAL CONFLICTS OF INTEREST**

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Administrative Office of the U.S. Courts (AOUSC) designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the AOUSC designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any

legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

I have engaged in no such activities.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the AOUSC designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the AOUSC designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Not applicable.

#### **D. LEGAL AND OTHER MATTERS**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes, as follows:

**A. Prior to Appointment to Tax Court in 1998:**

1. Dyer v. Commissioner, Docket No. 15921-88, U.S. Tax Court.  
The Internal Revenue Service proposed adjustments with respect to the joint Federal tax return for 1985 that my husband and I had filed. The case was settled. A decision was entered in the case reflecting that no deficiency or overpayment was due.
2. Dyer v. Commissioner, Docket No. 8438-87, U.S. Tax Court.  
The Internal Revenue Service proposed adjustments with respect to the joint Federal tax return for 1984 that my husband and I had filed. The case was settled. A decision was entered in the case reflecting that no deficiency or overpayment was due.
3. Dyer v. Commissioner, Docket No. 37893-84S; U.S. Tax Court.  
The Internal Revenue Service proposed adjustments with respect to the joint Federal income tax return for 1982 that my husband and I had filed. The case was settled. A decision was entered in the case reflecting that we owed a deficiency of \$324.54.
4. Marvel v. Berkeley, District Court of Maryland for Baltimore City.  
This was a lawsuit filed in my name by my insurance company, USAA, for damage sustained in an automobile accident in which my car was rear-ended by the defendant. I believe the case settled.

**B. After Appointment to Tax Court in 1998:**

1. Rodriguez, et al. v. Schulman, Civil Docket No. 11-1183, United States District Court for the District of Columbia (Feb. 21, 2012).  
The plaintiff, Isidoro Rodriguez, was disbarred by the U.S. Tax Court on October 16, 2009. Mr. Rodriguez filed suit alleging, among other things, that various individuals, including Judge Marvel, "embarked on a conspiracy to deprive Isidoro of his license to practice law and force him to pay more taxes than he believes he owes." Memorandum Opinion, p. 2. On April 21, 2012, an order was issued granting the defendants' motions to dismiss.
2. Schlabach v. Di Trollo, et al., Case No. 12203482-1, Superior Court of Washington, County of Spokane.  
In this litigation, Mr. Schlabach alleged that Judge Marvel exceeded her authority in a court of record by issuing orders without leave of court. He requested, among other things, that the Superior Court award damages of \$50,000 from each of 3 defendants, including Judge Marvel, and that the Court permanently enjoin Judge Marvel from

issuing any orders without leave of court. On January 8, 2013, the Superior Court issued an order granting a motion to substitute the United States for the named defendants, including Judge Marvel. The complaint was dismissed with prejudice on April 15, 2013.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None to my knowledge.

#### E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

*Questions for the Record from the Senate Committee on Finance  
L. Paige Marvel, Nominee, Judge, U.S. Tax Court  
Hearing Held January 15, 2014*

**Question From Senator Hatch:**

**Question 1:**

**As a Tax Court judge you will preside over many cases that involve unsophisticated taxpayers with few resources to deploy while making their cases. What lessons do you take from your prior professional experiences to ensure that you treat these taxpayers with respect and understanding while stopping short of awarding them an unfair advantage?**

**Answer:**

From my years as a practicing attorney, I learned how to be patient. I also learned how to listen actively and to observe carefully. Through the process of representing clients I developed an understanding of how to investigate and analyze a client's case and I learned, through much trial and error, how to present a client's position effectively and convincingly.

When I first became a judge in 1998, I quickly realized how a large population of unsophisticated taxpayers, many of whom are unrepresented, can be challenging for a judge. A judge must listen to testimony, review documents, and consider other relevant parts of the record in order to find the facts necessary to decide a case fairly. But, if a taxpayer does not know or understand what facts he or she must prove, the evidence presented by the taxpayer may be sorely lacking, making it difficult, if not impossible, for the judge to do anything more than state that the taxpayer, who often carries the burden of proof on an issue, has failed to carry it.

The Tax Court has addressed this problem over the years by adding procedures to improve communication between taxpayers and the attorneys who represent the Commissioner. These procedures include an emphasis on the cooperative and informal development of a case through stipulations, advance notification of the opposing party's position through the filing and service of a pretrial memorandum that sets forth the facts that the party intend to prove, identifies possible witnesses, and summarizes what the party maintains is the relevant law, and, if an expert is involved, advance disclosure of the expert witness' report.

The judges also assist in the education of litigants before trial by holding telephonic conferences with the litigants to discuss various matters that may affect trial such as the state of discovery disputes, the parties' level of preparation and understanding of what needs to be presented at trial, and related matters. Sometimes, the early opportunity to speak to the judge may be what is necessary to encourage the parties to speak to each other in a constructive way and even to settle the case.

As a judge I watch for signs that the communication is nonexistent or is breaking down between the parties and if I see those signs, I intervene to make it clear that I expect the parties to cooperate in preparing the case for trial and that I am available to assist in answering questions or resolving disputes. The intervention may take the form of an order, a conference call, or a written status report, and is always designed to get the parties talking with each other. I emphasize to litigants whenever I can the importance of working together to prepare their case for trial and my willingness to assist the case preparation process.

For those cases that have not settled by the time the trial session begins, I use the calendar call to spot problems and I schedule pretrial conferences during which I will work with the parties in an effort to overcome problems with the stipulation process and with communication generally. I will often use those conferences to insure that the taxpayers understand the facts they have to prove at trial, the applicable law as it relates to those facts, and, in difficult cases, the possible sanctions if they refuse to abide by the Court's rules.

Before the trial begins, I talk with the parties about the case and I try to make sure that the parties understand the issues and the trial process. I give instructions to each witness, including the taxpayer, emphasizing my interest in the witness' testimony and making sure that the witness understands what to expect. I will sometimes "prime the pump" by asking a taxpayer who is not represented to start his or her testimony by telling me about his or her education and work experience. I also will ask questions, if I feel it is appropriate and desirable to make a proper record, but I always give the parties an opportunity to ask follow-up questions so that they may fully develop any point they wish to make.

For the last 15 years, I have worked hard to make my courtroom a place where all litigants can get a fair shot at making their record and winning their cases. If confirmed, I hope and expect to continue that effort.

## COMMUNICATION



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

January 28, 2014

### STATEMENT FOR THE RECORD

The United States Council for International Business is very pleased to see progress made in the confirmation process for incoming Customs and Border Protection (CBP) Commissioner Gil Kerlikowske. We urge a swift conclusion to his confirmation and we hope for a quick transition period. We believe that Mr. Kerlikowske's experience and expertise will play a vital role in meeting CBP's goals regarding security and the swift yet efficient movement of goods between borders.

We are happy to hear of the incoming Commissioner's continued support for many initiatives that are important to UCSIB. In particular, we are pleased to see that if confirmed Incoming Commissioner Kerlikowske is ready to collaborate with Congress, the Commercial Advisory Operations Committee (COAC) and the private sector to help strengthen international trade and our borders. We are encouraged by Customs and Border Protection's movement toward full implementation of ACE and are ready to help complete full automation by 2016. We believe our members can bring substantive knowledge and experience to the public/private partnership on how to improve and broaden ACE and ITDS before full automation occurs. We are also glad CBP will continue modernizing its export process in supporting the president's National Export Initiative. We agree that this initiative will create jobs, strengthen the economy and make the United States more globally competitive.

We encourage the Commissioner, if confirmed, to continue focusing on the One U.S. Government at the Border campaign. This initiative would allow federal agencies to coordinate efforts through information sharing. We encourage CBP to meet with other governmental agencies, the Consumer Protection Safety Commission (CPSC) and the private sector in order to implement regulatory objectives without being overly burdensome to business. We also hope there is continued forward movement on the Centers of Excellence and Expertise (CEEs). The CEEs will create a more streamlined and uniform approach to customs, and together with ACE, will create a truly single window operation. We also urge CBP to continue their campaign for the CEEs to go paperless.

We will work with incoming Commissioner Kerlikowske in increasing awareness of the benefits of Customs Trade Partnership Against Terrorism (C-TPAT) members and encourage other members and those in the business community to join C-TPAT and become trusted traders. We will continue to offer input to Customs on how to improve and strengthen the program while pushing for full implementation. We ask for Customs continued focus on enhancing supply chain security and seek mutual recognition arrangements under various AEO programs. We support Customs and will serve as a voice when appropriate that identifies issues and concerns that CBP should address.

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. USCIB's vision and strength are provided by an active membership of over 300 leading corporations and organizations, while our unique global network helps turn the vision into reality.

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International Chamber of Commerce (ICC)  
International Organization of Employers (IOE)  
Business and Industry Advisory Committee (BIAC) to the OECD  
ATA Carnet System



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

USCIB also provides a range of business services, including ATA Carnet trade services for temporary imports and exports, to facilitate overseas trade and investment in partnership with CBP.

USCIB advances the global interests of American business both at home and abroad. We are the American affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the OECD, and the International Organization of Employers (IOE). We officially represent U.S. business positions both in the main intergovernmental bodies and vis-à-vis foreign business communities and their governments. We formulate our positions in numerous committees and other working bodies composed of business experts drawn from our membership of 300 global corporations, professional firms and industry associations and we advocate these positions to the U.S. government and to intergovernmental organizations such as the OECD, the WTO, the ILO and other bodies in the UN system with which our international affiliates have official consultative status on behalf of world business.

With our unique perspective, we look forward to continuing to work with and help Customs meet its goals and objectives. We urge a swift vote of support in the U.S. Senate for Incoming Commissioner Kerlikowse. We believe he is a wonderful choice to lead the agency. Through his leadership, Customs and Border Protection will be equipped for successful navigation of the intricacies of 21<sup>st</sup> trade and security.

Sincerely,

United States Council for International Business

